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1 THURSDAY, DECEMBER 2, 2021; 12:19 P.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 (In the presence of the jury:)

12:19PM

5 THE COURT: We are on the record in the trial matter
6 with the jury present, with all counsel.

7 And now for your closing argument, Mr. Blum.

8 MR. BLUM: Thank you, Your Honor.

12:21PM

9 Lawyers get up for closing arguments. First, it's
10 an argument. It's one of the few times we get to properly
11 argue stuff. The other reason is because when you watch TV
12 shows, when you watch movies, closing argument is always the
13 big point of the trial.

12:21PM

14 And we work under the fiction -- and it really is a
15 fiction -- that if we're really good at what we do, if we're
16 eloquent, if we have a command of the facts, we can move a jury
17 to our will.

12:21PM

18 Well, 40 years of doing this has told me that's a
19 bunch of bull. You can't do that. I'm not that good,
20 Mr. Richard isn't that good, famous lawyers like
21 Clarence Darrow who I grew up idolizing aren't that good.

12:22PM

22 But what we can do and what we -- what I'm going to
23 try to do is try to focus you a little bit, tell you what I
24 think is important, and ask that you look at the same things
25 and suggest some ways to look at things.

12:22PM

1 One of the reasons -- one of the things that sort of
2 turned me around from saying that I'm going to convince you to
3 I'm going to discuss things with you was conversations that I
4 had with a friend of mine's grandmother as a kid that really
5 didn't start making sense until I got into my 50s.

12:23PM

6 She was born in Lithuania in the 1860s, 1870s. And
7 in that time, it really wasn't healthy to be Jewish in
8 Lithuania. There were what is called pogroms, which were
9 basically riots against Jews. And she and her sister and her
10 mother escaped the pogroms in the Lithuania by walking from
11 their small, what was called a shtetl, which is where the Jews
12 lived, to Amsterdam, walking and getting on a -- a boat -- if
13 there was anything below fourth class, that's where they
14 were -- and sailing for days and days and days to get to
15 New York.

12:23PM

16 What the lesson that she taught me is that what we
17 do here today that we don't go to a judge who is trained in the
18 law, who has more experience in the law to decide what is --
19 issues dealing with millions and millions of dollars and where
20 you're being asked to determine what is safe water. We go to
21 originally nine and now eight ordinary people. And that's a
22 marvel. This is democracy in action.

12:24PM

23 That's what Rose taught me. And that's what I
24 realize. And that's why I look at closing not as a chance to
25 persuade but a chance to discuss.

1 Now, that doesn't mean that I'm not going to
2 advocate. Unfortunately, that's in my nature. But I hope to
3 more discuss the issues with you -- unfortunately, it's a
4 one-way discussion -- and to see if you agree with me.

12:24PM

5 Now, one of the essential issues is -- and one of
6 the essential things for this to happen -- is I have to be
7 truthful with you. I have to admit where there's bad facts, I
8 have to show you good facts. And I have to make sure that what
9 I tell you happened at the trial actually happened.

12:25PM

10 And that's why most of the evidence that I'm going
11 to put before you, not all, but the overwhelming majority is
12 either going to be via document -- and you're going to see
13 right next to the document the exhibit number -- or I will show
14 you the original transcripts. And if I read them wrong and if
15 I interpret them wrong, you're free to just disregard. That's
16 your role.

12:25PM

17 In essence, your role is to either agree, disagree
18 at your whim. If you think I'm wrong, then I'm wrong. If you
19 believe two plus two equals five, it really does. But what I
20 hope is in the end we'll both agree that two plus two equals
21 four.

12:25PM

22 And does that mean that Whittaker isn't responsible
23 here? Absolutely not. I told you that, that was my first
24 words in opening. The perchlorate is ours. And whatever you
25 decide is a reasonable sum to put a perchlorate treatment

12:26PM

1 system in 205 we have to pay. And Mr. Lardiere can live with
2 that. But what he can't live with is Dr. Najm. And we're
3 going to talk about that.

12:26PM 4 So if you want to know why we're here, wait until we
5 get to Dr. Najm -- or we talk about him.

6 So where does that bring us? That actually brings
7 us to where Mr. Richard ended. And I thought it was actually
8 an auspicious ending. He ended -- and this is not an exact
9 quote because I couldn't write that fast -- with the idea that
10 every citizen has a right to pure drinking water.

11 Now, let's assume that's true. Now, pure, we -- we
12 can debate. Does "pure" mean if there is one ten trillionth of
13 a billion of some chemical in there that has no health impact,
14 that that means it's not pure? According to EPA, it doesn't
15 mean that. According to the California EPA, it doesn't mean
16 that. According to the Department of Drinking Water, it
17 doesn't mean that. According to plaintiffs, it doesn't mean
18 that.

19 What I would ask you to do is look past the rhetoric
12:27PM 20 of Mr. Richard and look at the conduct of SCV Water. Do they
21 live by the creed or their credo that every citizen has a right
22 to pure drinking water? Do -- is 10 percent of the water they
23 serve to their customers knowingly containing VOCs? The answer
24 is yes. Is that making sure that every citizen has pure
12:28PM 25 drinking water?

1 Now, in my mind, it actually does. I don't -- out
2 of this courtroom, if you ask me am I worried about there's
3 some VOCs in the water, I would say no. But in this courtroom
4 where they're trying to make the case that the -- that the
5 water should have no VOCs, the hypocrisy is they regularly
6 serve water knowingly with VOCs and every once in a while
7 publish it in a nice fancy journal that most people never see.

12:28PM

8 Do they take -- when they -- when they know they
9 have VOCs in their water, how do they act? Do they act like,
10 oh, my God, this is a major issue? We've got to deal with it?
11 Or do they just say, hey, let's blame it on lab error? Or do
12 they just serve it? That's not practicing what they preach.

12:28PM

13 So what I ask you to do is go past the rhetoric,
14 mine and Mr. Richard, and let's go to what happened in this
15 case.

12:29PM

16 So the end is the beginning. I began by telling you
17 Whittaker is responsible for the perchlorate. I began by
18 showing you the stipulated fact that Whittaker paid for the
19 installation of perchlorate treatment systems for wells
20 Saugus 1 and Saugus 2.

12:29PM

21 In the trial, as it related to the construction of
22 V-201, remember what the facts were. There was an interim
23 agreement very early after the perchlorate was discovered, and
24 several million dollars was paid. After the interim agreement,
25 another \$10 million was paid after certain issues were

12:30PM

1 negotiated.

2 Now, Mr. Richard makes a huge deal out of the issue
3 of, well, what did you do about Q-2? You did this. You did
4 that. What he didn't remind you was that the issue relating to
12:30PM 5 Q-2 had to do with contractual obligations under the settlement
6 agreement. It was a question of who the contract required to
7 do what. And consistent with the -- with the settlement
8 agreement and the dispute resolution process, it was resolved.
9 It was resolved not in Whittaker's favor, but it was resolved
12:30PM 10 exactly how the parties agreed it would be resolved.

11 Now, I don't find anything wrong with that. I think
12 the water agency had the right to enforce the agreement, and
13 Whittaker had the right to go to those dispute resolution
14 processes that the agreement allowed.

12:31PM 15 But in the end, at the end of the day, as we sit
16 here today, Whittaker has paid approximately \$60 million to the
17 water agency. That's a lot of money. It's a lot of money.

18 So when I hear Whittaker -- from the water agency
19 that Whittaker has done nothing, that they have accepted no
12:31PM 20 responsibility, that they have delayed and delayed and delayed,
21 I think there's 60 million reasons why they're wrong. They're
22 wrong. They're wrong.

23 But let's talk about Mr. Najm -- or sorry --
24 Dr. Najm because this is, in my mind, the only real dispute in
12:32PM 25 this case: How much will it cost to pay for the perchlorate

1 treatment system?

2 Now, we have two totally different views of how you
3 determine costs. Both are legitimate depending upon where you
4 are. We are not starting on a clean slate here. We've
12:32PM 5 built -- we have built and paid for systems that were under --
6 for Q-2. We built systems for V-201. We've built systems for
7 Saugus 1 and 2. Mr. Simpson has lots of experience in how to
8 deal in this system. We have lots of knowledge about what
9 things happened.

12:32PM 10 So the analogy that Mr. Simpson gave you, I think
11 it's apt. If you want to go decide how much is my car going to
12 cost, there's lots of ways to figure it out. One of them would
13 be look on the Internet and find out what they sold for three
14 days ago. One would be go to the dealer and say, hey, how much
12:33PM 15 will you sell this for me? One would be to ask somebody who
16 brokers these cars, how much have you sold them for? Or you
17 can hire an engineer, you can pay the engineer to do designs
18 for that car, you could then put those designs out to bid to
19 see who will -- what people will charge to build that car, and
12:33PM 20 you can pay for all -- and then you can pay somebody to build
21 that car.

22 If you choose the second scenario, then plaintiff is
23 right. But I don't think plaintiff's right. I don't think
24 anybody in their right mind would ever build and buy a car
12:34PM 25 based on that.

1 It makes no sense at all why you wouldn't determine
2 the cost based upon known -- based upon what we know for sure.
3 Yet plaintiff wants to start from scratch as if nothing has
4 ever been done before at this project. The problem is it's
12:34PM 5 just not true. It doesn't meet the facts on the ground.

6 So when we look at what Dr. -- Dr. Najm did and
7 compare it to Mr. -- what Mr. Simpson did, we get, not
8 amazingly, predictably huge differences in costs. But this is
9 a critical issue. While Mr. Simpson came to you and he said,
12:34PM 10 the perchlorate treatment system will cost X, \$3.1 million, and
11 we ask you award plaintiff that money, award it to them, they
12 deserve it. It is righteous that they should get it.

13 And by the way, the head of the company is sitting
14 right there, and you don't see him throwing anything at me. I
12:35PM 15 don't say that unless he says do it. Award the money to them.
16 They rightfully should have it.

17 But what you shouldn't do is, in a sense, play into
18 what is what plaintiff's counsel always do when they don't like
19 the number.

12:35PM 20 Now, you never heard a number for how much a system
21 to treat perchlorate will cost at 205 from Dr. Najm. He didn't
22 tell you. What he told you was how much it would cost to treat
23 both VOCs and perchlorate. And the numbers he came up
24 with were, I think, 13, \$14 million.

12:36PM 25 Now, of that 13, \$14 million, how much goes to

1 perchlorate? How much goes to VOCs? We don't know. We don't
2 know. But what the plaintiff hopes you'll do is forget that he
3 added them up, that he commingled everything, and that you will
4 just go with the number without thinking through it.

12:36PM

5 Now, the plaintiff's case rests on this concept
6 that, if they muddle stuff enough, if they combine all these
7 things, such as all the activities that took place on a site
8 for over 100 years, that you're not smart enough to figure out
9 that the hundred years isn't important. You've got to look at
10 things, what did Whittaker do and what was Whittaker's
11 obligations, what did Bermite do and what did -- what was
12 Bermite's obligations over ten years before RCRA was ever in
13 effect.

12:36PM

14 And, oh, by the way, we also know that disposals
15 that took place even before Bermite were still found at the
16 site. We know fireworks were there. Fireworks were found in
17 the Hula Bowl. Fireworks hadn't been manufactured in the site
18 since, I think, 1937.

12:37PM

19 But if we combine them all and we argue, look how
20 bad the site is without trying to prove who did what or we
21 combine the costs of something without any reference to what
22 are the costs, you're going to be so mad at Whittaker that
23 you're going to forget what you probably should do.

12:37PM

24 So in the end, I ask you as the attorney for
25 Whittaker to enter a verdict in favor of plaintiff for

12:38PM

1 \$3.1 million. It's the proper thing to do.

2 All right. I want to talk a little bit about the
3 evidence. You know, maybe it's just that I'm married to an
4 English teacher, but words are important to me. Words have
12:38PM 5 meaning. When you say -- and in the law, words are very
6 important. We argue over commas and what it means.

7 So when I spent time with Mr. Lechler and say, well,
8 what words did you use and now, the words you use, what you
9 mean. You know, Mr. Lechler -- there were three experts that
12:39PM 10 testified on groundwater movement for the plaintiffs --
11 Mr. Lechler, Ms. Stanin, and Dr. Trudell. And then Dr. Hughto
12 testified on a related issue.

13 Every one of their experts changed their opinion
14 from their reports. Ms. Stanin did it at least on the issue of
12:39PM 15 whether or not TCA began to be used in 1967. Dr. Trudell, I
16 counted it this morning, did it on the TCA. He did it on
17 whether or not the wall -- the mall wells were -- were
18 Whittaker source or not. He did it on whether or not there was
19 evidence to support beyond a reasonable scientific probability
12:39PM 20 that Whittaker was the source at all the wells. And Dr. Hughto
21 did it at least on the issue of TCA.

22 Say what you want about Mr. Hokkanen and Mr. Daus.
23 Were they impeached once because they didn't say what they said
24 in their report? No. In fact, we actually counted it up last
12:40PM 25 night. We only found one instance in the entire trial that was

1 on a minor issue with Mr. Simpson in which Mr. Richard or
2 Mr. Gee were able to impeach one of the witnesses -- I mean,
3 any witness, was shown that they testified differently than
4 they did at their deposition. Once.

12:40PM

5 With Dr. Trudell, we had one every -- probably one
6 every five to ten minutes. And why is that important? There
7 is a -- there is a famous trial in the 1920s and '30s called
8 the Leopold and Loeb murders. These were two very rich, very
9 sick teenagers who thought that they were Superman and that

12:41PM

10 they could commit the perfect murder. And the District
11 Attorney's Office tried to get the death penalty imposed. And
12 they were represented by Clarence Darrow, one of the most
13 famous trial lawyers ever. And it was the first time anybody
14 ever put on a psychological defense in a death penalty case.

12:41PM

15 There was a fictionalized account of the trial
16 called "Compulsion." Good movie. And I remember reading
17 something in the book that has stuck with me -- and it's been
18 about 30 years, 40 years since I've read it -- and it's a
19 statement that a -- the truth -- a lie is just as easy to tell
20 as the truth. The truth is just easier to remember.

12:41PM

21 The reason Mr. Hokkanen and Mr. Daus weren't
22 impeached is because they were telling the truth. They didn't
23 have to guess as to what the right answer should be. They
24 didn't have to guess whether or not, if they answered the
25 question like they did in their depo, how it would help the

12:42PM

1 case today.

2 So when Dr. Trudell was asked in his depo, was
3 Whittaker the source of the VOCs at the mall wells, if you
4 remember, which was past V-205, in his depo he says, no,
12:42PM 5 they're not. And in the trial he says, oh, yeah, they are.

6 When in his deposition he testified that SIC was the
7 cause of a small amount of contamination in the Saugus wells,
8 he said, yes. In the trial, he said, no. What he said was --
9 this is hard to grasp -- that, even though he believes that
12:42PM 10 there is a small amount of contamination from Saugus -- from
11 SIC at the wells, there's no pathway for it to get there, as if
12 martians put it there.

13 The truth is easier to remember. But plaintiff's
14 experts time and time and time again strayed so far from the
12:43PM 15 truth that almost all of my depositions -- I'm sorry, all of
16 the examination with Dr. Trudell ended up being, didn't you
17 testify differently at trial -- I'm sorry -- at the depo?

18 And that brings us to Mr. Lechler and the word
19 "possibility." Now, Mr. Richard told you that what Mr. Lechler
12:43PM 20 said on the witness stand was that, I used the word
21 "possibility" in my report and you're misreading what I said
22 because that only dealt with the screening process. Well,
23 that's not true. This is what he testified to in his report --
24 I'm sorry -- in trial. This is right from the transcript.

12:44PM 25 *"On that date, looking at the totality of*

1 the information that you had at that moment, not just
2 the report but everything you had at your disposal,
3 isn't it true that the only thing you could conclude
4 based on all of that information" -- and that's the
12:44PM 5 date of his deposition -- "was that Whittaker was --
6 was that there was a possibility that Whittaker was a
7 source?

8 "ANSWER: It sounds accurate that I said that
9 in my deposition."

12:44PM 10 So in his deposition, three to four years after the
11 report, he still believed that it was only a possibility, not
12 likely, not more likely than not.

13 So when Mr. Richard said that it was only in the
14 report and he stood by his report, it's not true. Four years
12:45PM 15 later at his deposition, he still believed it. It's only when
16 he got on the witness stand that "possibility" morphed into
17 "more likely than not."

18 Now, let's talk about the burn pit. Now, the burn
19 pit is a dirty place. Again, that's the truth. But there's a
12:45PM 20 reason why. You know, Whittaker was not building widgets.
21 They weren't building toys for people. They weren't building
22 microwave ovens. They were building missiles to be used by the
23 Air Force and the Army. They were building weapons. And
24 whatever you think about the war in Vietnam and whatever -- I'm
12:45PM 25 not sure any of you were old enough during the war. But

1 whatever you thought when you were almost drafted, Whittaker
2 had an important job to do to protect people in harm's way.

3 And as you would expect, the military just doesn't
4 say, "Go build the missiles. And if they work, cool. And if
12:46PM 5 they don't, uh, well, we'll just" -- "the pilots said they're
6 not really needed, they're not important."

7 So there were a lot of rules. And one of the rules
8 is we don't want people to know how we make the fuel, what's in
9 the fuel, partly -- which is partly perchlorate.

10 So according to the testimony -- we're going to look
11 at that testimony -- burning was required. That's how you
12 destroyed it. And the burning didn't take place in -- at
13 night. The burning, as you're going to see, was done pursuant
14 to a permit, as Dr. Hughto said, from the L.A. County Fire
12:46PM 15 Department who were there when the burning was done. Again,
16 don't take my word for it.

17 Now, when Dr. Hughto testified, I cross-examined him
18 about a report from a Mr. Zoch. Now, Mr. Zoch had seen a lot
19 of documents that -- that Dr. Hughto did not. He had seen
12:47PM 20 contracts that Dr. Hughto didn't see and he'd seen other things
21 that Dr. Hughto didn't see. I don't blame Dr. Hughto for that
22 because we're dealing with something that happened decades ago.
23 And documents -- they're not there. But at the time Mr. Zoch
24 was examining things, they were there.

12:47PM 25 So what did Mr. Zoch conclude?

1 "QUESTION: And doesn't Mr. Zoch conclude that
2 under the terms of the Bermite contracts referencing
3 the Government's Ordinance Safety Manual, perchlorate
4 waste as well as other explosives and munitions were
12:47PM 5 required to be destroyed?"

6 Now, unfortunately, I marked that down. But what he
7 said was, "That's what Dr. Zoch concluded." That's why the
8 burn pit has the contamination it does because that's where the
9 perchlorate was burned, that's where rags with VOCs were
12:48PM 10 burned, that's where anything that the Government required to
11 be was burned.

12 It was done under the view of the fire department,
13 under the orders of the DOD. And the testimony shows that
14 there were DOD inspectors that were present. This was not
12:48PM 15 clandestine. This was out in the open. Not only that, it was
16 required.

17 So the one thing that Mr. Hokkanen said that I think
18 is the most important is he follows the data. And I think that
19 you would conclude that he does follow the data. He is -- I've
12:48PM 20 seen few people who have such a command of the data as
21 Mr. Hokkanen.

22 And the data not only controls the science in terms
23 of the hydrogeology. The data that we looked at is the
24 testimony, the evidence. For us, that's the data. And we
12:49PM 25 follow it.

1 For instance, the manifests. Now, there's been
2 claims about manifests all through this trial. We didn't have
3 them. When we had them, they weren't complete. But what
4 really are we talking about?

12:49PM

5 Now, according to Dr. Hughto -- this is that
6 manifest that Mr. Richard spent five minutes on claiming that
7 it did not identify who the receiving party was. Remember,
8 that was his claim. Well, that's just not true.

12:49PM

9 The testimony from Dr. Hughto is it is your
10 understanding that the signatures that were missing were from
11 the party that received the waste rather than from the
12 generator which would have been Whittaker. Remember, the
13 signatures. That's the only thing he's claiming is missing.

12:50PM

14 It is my understanding is the missing signatures
15 that were cited in that document were of the receiving
16 facility.

17 *"So Whittaker did what needed to be done. It*
18 *was somebody else who messed up?*

12:50PM

19 *"ANSWER: I can't tell you what Whittaker did.*
20 *I can just tell you what the document says. It was*
21 *missing signatures from the receiving party."*

12:50PM

22 And you recall I went over with Dr. Hughto this
23 whole process, the generator signs which was Whittaker, the
24 transporter signs, and there's, remember, copies, and then the
25 receiving party signs it. Whittaker's not even there because

1 the transporter is the party that takes it to the site, has no
2 control over what the receiving party does.

3 But in the end, Whittaker sent, because that's what
4 they were required to do, a copy of that manifest to the
12:51PM 5 regulators in the state. Hardly the conduct of someone who's
6 trying to hide these disposals.

7 And the evidence is also there that while there may
8 have been periods where Whittaker may have been delinquent in
9 terms of where they kept the manifest, at least during the
12:51PM 10 inspection in 19 -- I believe it's 1989, they're up-to-date.
11 They had all the manifests and most of the -- most of the
12 documents they needed.

13 Now, this is an inspection report. And it's
14 Exhibit 225. And it was conducted by an individual with the
12:51PM 15 Department of Health Services, which is the predecessor of what
16 is now DTSC. And he goes through the whole case, everything
17 they found. And he talks about -- oops. Sorry.

18 And if you look at the area on page 6, he discusses
19 what he found and what he didn't find. And here, he talks
12:52PM 20 about manifests. And his conclusion is, everything is there.
21 All the manifests required are present. He goes on to talk
22 about other documents. Some of them Whittaker didn't have on
23 site and they had to send later, but most of them Whittaker
24 had.

12:52PM 25 The issue is not, in a sense, has Whittaker every

12:52PM

1 single time complied with every single law? I'll tell you they
2 haven't. I don't think anybody ever has. But the idea that
3 Whittaker threw its nose up in the air and said, ha, you know,
4 or what my -- one of my friends would say, pshaw, I'm not doing
5 it, is ridiculous.

12:53PM

6 Whittaker had the same problems in the early '80s
7 that every company had. They were dealing with laws and
8 regulations that nobody knew what they were doing. And so what
9 did they do? They went and they did inspections. They found
10 out this area needs fixing, that area needs fixing. They did
11 training, as you heard yesterday. Everybody was trained up on
12 RCRA. They created manuals. They used the DOD manual. And
13 when somebody didn't follow, there were repercussions. There
14 were memos going back saying, hey, this guy won't do it. He's
15 got to.

12:53PM

16 Now, in the memos you saw -- which, by the way, if
17 we were destroying records, how in the heck did they get those
18 memos? But in the memos you saw, there was not a single memo
19 reprimanding anybody for reporting a problem. There wasn't
20 even a statement, hey, we really shouldn't be reporting this.

12:53PM

21 Now, there were bad timed jokes such as, oops, I
22 forgot to show them the East Fork. Not funny. And I'll tell
23 you, if Mr. Peloquin did it on purpose, he should -- deserves
24 to have been fired. But he didn't do it on purpose. We're
25 talking about a thousand-acre site. Of course there's things

12:54PM

1 he's not going to see.

2 But nobody is reprimanded. None of the employees
3 have testified either via deposition or otherwise said there
4 were any repercussions. Nobody went to DTSC and said, hey,
12:54PM 5 this is a problem, except for the mystery memo which we'll talk
6 about.

7 And as to the failure of us to call witnesses,
8 plaintiff had subpoena power in this case. They could have
9 deposed anybody they wanted. If they thought that Gordon --
12:54PM 10 I'm going to -- I always have problems pronouncing his name,
11 but I think we know who he is -- should have testified, hit him
12 with a subpoena. With all the depositions we've seen in this
13 case, you can see nobody was shy.

14 Whittaker did its best, they were not perfect.
12:55PM 15 Nobody is except my 16-year-old.

16 But at the end of the day, there's no basis for
17 concluding that there was any willfulness here, that there was
18 any spite, that there was any despicable conduct.

19 And when you talk -- let's talk about groundwater
12:55PM 20 monitoring. You saw a couple of complaints where -- at the
21 time that the EPA and DTSC took issue with the groundwater
22 monitoring process.

23 Now, you know what a complaint is. It's an
24 allegation. There were no convictions here. There was no
12:55PM 25 Court saying we didn't follow the law. It's simply

1 regulators -- and I don't doubt they're in good faith -- who in
2 good faith disagreed with Whittaker. But in the end --
3 actually, in the beginning, Whittaker did what it was supposed
4 to.

12:56PM

5 Now, Mr. Peter -- I'm sorry, Mr. Richard showed you
6 a 1985 letter that went from the water board to Whittaker that
7 says you need to go out and test. And he made a big deal out
8 of that. What he didn't show you because it didn't support his
9 theory of the case is how that letter came to be.

12:56PM

10 Now, this is -- I think the exhibit number is on the
11 next page. But the -- the exhibit is a RCRA inspection of the
12 Bermite facility in May 1985 that was done by the Regional
13 Water Quality Control Board. And in it, the inspector, when
14 she does the report, explains how we got to that 1985 letter.

12:57PM

15 First -- it's Exhibit 1427. First, she discusses
16 that the current ISD, the Interim Status Document -- remember,
17 that's the permit under which Whittaker operated -- did not
18 contain groundwater monitoring requirements.

12:57PM

19 In other words, there was no legal requirement for
20 Whittaker to monitor anything. I'm going to repeat that.
21 There was no legal requirement for Whittaker to monitor
22 anything.

12:57PM

23 Now, Whittaker had filed a closure plan, which is
24 what they're supposed to do, on September 9th, 1983, pursuant
25 to regulations. They were complying there. Soil tests were

1 done, and samples were obtained from underneath surface impound
2 areas. So they did sample underneath surface impound areas and
3 found no evidence of contamination. They did what they were
4 supposed to do.

12:58PM

5 Then she goes on in the paragraph that no
6 groundwater monitoring system at the facilities required for
7 current ISD compliance, repeating what she said. And she talks
8 about a production well found in the northern area.

12:58PM

9 What she then does is says, you know, that's not
10 enough. We think you need to go retest the production well.
11 And it's retested. And at that point, VOCs are discovered.

12 Now, remember, at that time there were no MCLs for
13 VOCs. This was all new. And it's that discovery which
14 basically starts the engine going to where Mr. Daus testified.

12:58PM

15 In the interim, there was some disagreements between
16 EPA and Whittaker about exactly what needed to be done. Those
17 disagreements were resolved in about 1988. At that point, what
18 EPA said was, you know, we don't know enough about the --
19 basically the substructure, what's going on underneath the

12:59PM

20 groundwater, underneath the surface. Go and find out. And
21 when that's done, let's talk about monitoring for contaminants.

22 That is the process that was done, hand in hand with
23 EPA and later with DTSC. But it was a slow process for lots of
24 reasons.

12:59PM

25 First of all, in 1988, nobody even conceived that

1 perchlorate was a problem. That's what everybody has testified
2 to. That wasn't known until 1997. There was no MCL for VOCs
3 at the time. How you even test groundwater wasn't really
4 known. But we learned and -- and we cooperated.

01:00PM

5 And, yes, there were disagreements. But in the end
6 result, if you want to know -- if the proof is in the
7 pudding -- and let's even assume that Whittaker is the source
8 of the VOCs, which they're not, where's the harm? What bad
9 happened?

01:00PM

10 The VOCs for the last, I think, four or five years
11 have been below the public health goal of 1.7, I believe, parts
12 per billion. According to the plaintiff, that's the number
13 that -- under which there is no public health risk at all,
14 zero. There has never been a reading of VOCs in any of these
15 wells above an MCL. Never.

01:00PM

16 Even plaintiff's experts say that the MCL equivalent
17 is below 1, which is the cutoff. What -- even assuming we're
18 the source, even assuming we delayed, which we didn't, as it
19 relates to VOCs, there was no damage. That's just a matter of
20 fact.

01:01PM

21 So where does that take us? This takes us to the
22 mystery memo. And you'll recall, this is the one that
23 Mr. Sorsher talked about. But I want to go around a few things
24 on it. It's Exhibit 445.

01:01PM

25 First, this is an internal memo, remember. It's one

1 that says attorney-client privilege. You would expect this is
2 the place that they would not lie, even if they wanted to
3 otherwise. Clearly, as you can see, "hazardous waste has been
4 manifested and shipped to permitted hazardous waste
01:02PM 5 facilities." Again, they used manifests, which means they sent
6 copies to the regulators, not hiding much -- or at least if
7 they were trying to hide something, they were really bad at it.

8 And this, in my mind, was the most interesting part
9 of this memo. This is the process that Mr. Wenck used in
01:02PM 10 remediating the areas that they were looking at. And I spent a
11 lot of time, you might remember, with Mr. Hughto. I went over
12 each of the five steps. And in each of the five steps,
13 Mr. Hughto said that's the way it should be done.

14 So maybe we didn't tell people that we were doing
01:02PM 15 it. But we didn't use that as an excuse of not to do the right
16 thing. And who -- who can you ask about that? Ask plaintiff's
17 expert.

18 All right. Now, I want to move on to talking about
19 who's the source. And I have to admit, plaintiff has a --
01:03PM 20 plaintiff has a much easier job here than I do. There's VOCs
21 at the Whittaker site and there's VOCs in the wells. So why
22 aren't we the source? It's -- it's easy. Here and here. And
23 there's a way to get there.

24 So it's obvious. And it strikes me as -- you might
01:03PM 25 guess that I love quotes. There's a famous old Baltimore Sun

1 reporter called H.L. Mencken who's real good for quotes. And
2 one of my favorite quotes of his is for every difficult issue,
3 there's a simple answer that's wrong.

4 Getting from here to here is not as simple. You've
01:04PM 5 got to know a lot. It didn't take -- how many hours of
6 testimony did we have from geologists and hydrogeologists? And
7 what plaintiff wants you to do is say, well, it's here and it's
8 here, therefore -- but that's wrong.

9 And how do we know? How do we know that even
01:04PM 10 plaintiff knows that it's not that simple?

11 If we look at the history of plaintiff that led to
12 the filing of the Complaint, what you're going to find out is
13 at the time they filed the Complaint, they had been told time
14 and time again that it wasn't clear that Whittaker was the
01:04PM 15 source.

16 And that's how we know that for every complicated
17 question, the plaintiff has chosen a simple answer that's
18 wrong.

19 So this starts in 2010. And again, we're going to
01:04PM 20 go with documents in December.

21 Mr. Lechler has a conversation with James Leserman
22 who he then memorialized in an e-mail to one of his coworkers.
23 And in the e-mail, what Mr. Lechler says is Jim Leserman told
24 me that the Department of Public Health is concerned about
01:05PM 25 VOCs, which was TCE, that they'd been found to be as high as

1 3.6 parts per billion. And they want somebody -- they want the
2 agency to investigate. What Mr. Leserman says is, well, I
3 guess we have to do an investigation, knowing that it may or
4 may not be Whittaker as the source.

01:05PM

5 So the senior engineer for what became the water
6 agency is telling the project manager for the Army Corps of
7 Engineers at the time that, hey, it may not be the source,
8 Whittaker. And that's in 2010.

01:06PM

9 Where does that take us? That takes us to 11 days
10 later. And that's the date in which they get the permit for
11 operating this SPTF, the Saugus Perchlorate Treatment Facility.
12 And if you recall, attached to that permit was an engineering
13 report. And this is Exhibit 96.

01:06PM

14 And this engineering report is prepared by a
15 sanitary engineer, and it's reviewed and approved by
16 Mr. Jeff O'Keefe, who, as luck would have it, today is the head
17 of the district for the Department of Drinking Water that's
18 dealing with the case here.

01:07PM

19 And what does Mr. O'Keefe approve as a conclusion?
20 If we look, they talk about this is contamination found at
21 AL-12B, which you recall is really close to the Saugus wells.
22 And Mr. O'Keefe concludes that the TCE and PCE contamination at
23 this location is not believed to have originated at
24 Whittaker-Bermite site.

01:07PM

25 What's the next thing that happens? The next thing

1 that happens is the water agency puts out a bid request. And
2 they put out the bid request and what they're asking for is
3 different consultants to bid on doing an investigation of the
4 source.

01:07PM

5 Now, one of the consultants is Todd Engineering.
6 And Todd Engineering, just coincidentally, is the same company
7 that employed Ms. Stanin. And they create a bid proposal. And
8 they send it in to Mr. Leserman. And in the bid proposal, Todd
9 says, well, we believe Whittaker is a likely source. But also,

01:08PM

10 so is SIC. And by the way, other sources of TCE may also exist
11 near the production wells, potentially contributing to the VOCs
12 in the wells.

01:08PM

13 So Leserman has been told at that point by
14 regulators that there's contamination out there that's not
15 Whittaker's. He admits earlier that Whittaker may not be the
16 source. He's told again by people that are working for him and
17 bidding that, hey, there's other sources out there.

01:09PM

18 So what does he do? Well -- or what does the agency
19 do? They wait two years. And what they decide -- this is
20 Mr. Leserman's testimony -- is they're going to hire
21 Mr. Lechler from CH2M Hill and he's going to do a preliminary
22 report. And depending upon what is concluded, he'll have to do
23 a follow-up report. And Mr. Lechler goes and does that report.

01:09PM

24 And as we discussed, that report concludes that
25 Whittaker and SIC are a potential source because that's the

1 only thing the report was supposed to do. That's what the
2 purpose of the report was.

01:09PM 3 Now, at this point, the water agency has a decision
4 to make. Do they go out and do a more thorough report and try
5 to take it from potential to positive or more likely than not
6 or whatever you want to use? Do they then go to Whittaker and
7 say, hey, let's get something done proactively or something
8 else?

01:10PM 9 Now, Mr. Leserman was evasive when we asked him what
10 was the decision. But we had his testimony from the
11 deposition. Well -- and this is what they decided. Oops. I'm
12 sorry. There's one intervening act that I forgot.

01:10PM 13 One intervening act is DTSC responds to the letter
14 that -- or the study that was done. And what DTSC doesn't say,
15 go out and do more investigation for Whittaker. This is
16 Exhibit 12. You need to go out and investigate for SIC. And
17 one of the reasons is because the SIC plume also contains
18 higher TCE concentrations than the Whittaker VOC plume. In
19 other words, it was the SIC plume that had the VOCs in it, the
01:11PM 20 large numbers.

21 So with that additional piece of information,
22 Mr. Lechler then makes the decision -- I'm sorry --
23 Mr. Leserman, after talking to counsel and his superiors, makes
24 the decision. And this is the deposition transcript that was
01:11PM 25 played.

1 (Videotaped deposition was played.)

2 MR. BLUM: All right. Sorry about that.

3 So when I talk about litigate, don't investigate,

4 this is the basis for it. I don't think it's a crazy

01:13PM 5 conclusion. Nobody had said Whittaker was the primary source.

6 DTSC had said you got to look at SIC because the -- there's a

7 greater amount of TCE coming from there. Their own bidders who

8 had worked for them said, hey, there's other sources out there.

9 The future head of the local DDW said Whittaker isn't the

01:13PM 10 source.

11 The decision made by the agency which brings us here

12 today to talk about VOCs that aren't above the MCLs, that

13 aren't above the public health goal, that aren't above the

14 equivalent -- the MCL equivalent was made because they thought

01:13PM 15 it was less expensive and more advantageous to litigate rather

16 than investigate.

17 That leads us to the Complaint in the case. So

18 what -- what do we do with the evidence?

19 Now, as -- Mr. Richard was right, there is an

01:14PM 20 instruction that you got that says you may consider the ability

21 of each party to provide evidence. If a party provided weaker

22 evidence and it could have produced stronger evidence, you may

23 distrust the weaker evidence.

24 And that brings us to this. You know, I've learned

01:14PM 25 that you can tell about a company by whether the boss leads

1 from the front. Let's look at Mr. Lardiere. Does he lead from
2 the front? When you saw him on the witness stand, was he
3 blaming other people? Did he send his minions out to take the
4 blame? At any point in time did he tell you not my job, not my
01:15PM 5 responsibility, unless it was technical issues, which he may be
6 a smart man, but he ain't a hydrogeologist. No. Did he send
7 his attorneys up there to say we have no responsibility? No.

8 Now, we also know who the head -- excuse me -- who
9 the head of the water agency was. It was Matt Stone. It's the
01:15PM 10 gentleman who spent most of the trial -- although, not now --
11 sitting next to Mr. Gee. Did he testify? No. When we're
12 trying to determine what was the policies, as, like, is it the
13 policy to serve water that is known to be safe, what happened?

14 So instead of Mr. Stone, they sent up his underling
01:16PM 15 to testify, Mr. Abercrombie. And Mr. Abercrombie was evasive
16 as to simple questions, such as: "That wasn't my question,
17 Mr. Abercrombie. My question is: Is it safe?" Talking about
18 the water.

19 And his answer is: "I don't know if I can answer
01:16PM 20 that question."

21 Now, I expected him to say, well, I'm not a
22 toxicologist. That's actually legitimate. He says, well --
23 and I say, "Well, you're the head of operations. Who do we ask
24 if not you?"

01:16PM 25 "ANSWER: Maybe you should ask the Division

1 of Drinking Water.

2 "QUESTION: Well, the decision to serve the
3 water with VOCs in it is being made by you. Is the
4 water safe, in your opinion?"

01:16PM 5 His answer: "I don't have an opinion."

6 It's ridiculous. He's the head of operations. The
7 head of their operations isn't willing to say the water is
8 safe. Not because it isn't safe, because actually it is, but
9 because he knows that if he says it's safe, it hurts this case.

01:17PM 10 You go further. And this is -- this was my
11 favorite. These are two gentlemen who clearly are not
12 professional witnesses. They're -- they have major roles in
13 the operation of plaintiff. Mr. Leserman is the senior
14 engineer. Mr. -- excuse me -- Alvord is the head of
01:17PM 15 operations. And each of them spent half their time explaining
16 or trying to explain why the testimony in their deposition,
17 such as the question being: If it's below the MCL, you serve
18 that water? Both of them testified, yes, we do in their
19 deposition and then ran a hundred miles an hour the other way
01:18PM 20 when it was asked at trial. And what was their excuse?

21 According to Mr. Lechler, if you go down to the
22 bottom, it says:

23 "QUESTION: You remember testifying under
24 oath on December 5th, 2019?

01:18PM 25 "ANSWER: That was my first deposition. I

1 *remember it, and I know a lot more now than I did then."*

2 The problem is when I asked him what do you know
3 now, he wasn't able to say anything.

4 But a similar question was asked of Mr. Lechler:

01:18PM 5 *"When you made the statement that the policy*
6 *was to deliver the water to customers below the MCLs,*
7 *was that a correct statement?*

8 *"At the time, it was my first time testifying,*
9 *and sometimes I tend to get flustered."*

01:19PM 10 Is that a coincidence, that their excuse was
11 identical? I'm not going to venture a guess as to why they
12 both decided to try to evade their deposition testimony by
13 saying it was my first deposition. I'll let you make that
14 decision.

01:19PM 15 But it can't be denied that it's evidence that at
16 least the two of them colluded as to how they were going to
17 deal with deposition testimony that was, frankly, devastating
18 for the agency. If you believe the depositions, one, if it was
19 below the MCLs, serve it; two, there is no policy that the
01:19PM 20 district has, contrary to what Mr. Richard argues, that said
21 that water must be pure to serve. That was both of their
22 deposition testimonies. They both changed their mind because
23 it was their first deposition. Just a fact that we needed to
24 make clear.

01:20PM 25 What the water agency is asking us -- asking

1 Whittaker to do is you should have done more investigation out
2 there. It was a theme of the closing argument. There's not
3 enough wells out there.

4 Well, there is a department in the state that
01:20PM 5 regulates that. It's called the Department of Toxic Substances
6 Control. And as you heard -- you heard about RAPs. There was
7 a RAP called for, OU-7. And that RAP basically was approved by
8 DTSC and controlled what type of investigation had to be done
9 in the groundwater offsite where these wells are. And as you
01:20PM 10 heard, DTSC said there's -- there's no need to do any treatment
11 for VOCs. They're all below the MCLs.

12 So let's talk about -- let's talk about the
13 plaintiff and let's talk about the property interest because
14 sometimes the law turns on arcane ideas. And one of them is,
01:21PM 15 at least for the causes of action for nuisance and trespass,
16 those are both invasion of property rights.

17 Now, it makes perfect sense that in order to figure
18 out if property rights are invaded, you, as the jury, needs to
19 know what the property rights are. And this is one of the
01:21PM 20 instructions that you were read.

21 And we have two different property rights here. The
22 first one is the appropriative right. And this is the key
23 here. The appropriative right is the right of the plaintiff to
24 draw water from the ground.

01:21PM 25 Now, they don't own the water. The State of

1 California does. But because of certain contracts, they have
2 the right to withdraw it and sell it to their customers. But
3 in order -- that right, that property right doesn't mature and
4 they cannot claim their damage until they get possession of the
01:22PM 5 water. And so what they have to prove is what the last
6 sentence says, Plaintiff must prove that the injury took place
7 after the water was extracted from its wells.

8 So they have no interest at all in the water until
9 they get possession of it. There's no evidence that, after
01:22PM 10 they pumped it out, there was any injury. VOCs weren't added
11 then. If they're right and we're the source of the VOCs, it
12 was a couple of miles earlier that the VOCs were added to the
13 water prior to the time they had any property rights. There's
14 no injury to those rights. They don't have the right to be
01:22PM 15 compensated for those rights because they were not injured.

16 The second interest is an interest in land.
17 Plaintiff also contends that it owns an interest in land upon
18 which wells are located, including the surface property and the
19 subsurface.

01:23PM 20 Now, I -- the evidence that they had actual
21 ownership of land that came in contact with the groundwater is
22 nil. There is a single sentence in the entire transcript --
23 and it's from Mr. Alvord. It was almost like a throw-in
24 statement where he says they have ownership rights. And I
01:23PM 25 think he said in the wells and other associated rights.

1 So is it other associated rights or is it ownership
2 rights? But regardless of what either -- either of them are,
3 have you heard a single piece of evidence that the land that
4 they own -- well, first of all, do you know what land they own?
01:23PM 5 I don't. But even if you're smarter than I am -- and I -- that
6 can be entirely true -- there's no evidence that the land was
7 injured. Is there any evidence that they've had to pay a dime
8 because of contamination to their land? No.

9 There are no property rights that are injured in
01:24PM 10 this case. There's no land that was injured, there's no water
11 injured. So when we talk about injury, focus on the right
12 injury. Focus on what the law focuses on.

13 All right. This is in a sense maybe the most
14 important argument. I don't want to make -- I don't want to
01:24PM 15 make light of VOCs. Okay? I want to be clear here because it
16 was difficult for me to figure out how to frame this. And I'm
17 not saying this was a basketball game, no harm, no foul.
18 That's not what I'm claiming. This is much more important.

19 Mr. Richard is right, water is important. Water is
01:25PM 20 a necessity of life. But since it is so important, it's
21 important that we treat it based on science and not based on an
22 agency's desire to get more money from someone who's already
23 paid them \$60 million.

24 So what does the science tell us? Is there a health
01:25PM 25 risk? The maximum contaminant level. Nope, never above it.

1 Public health goal, 11.7. There's not been one hit, not since
2 2017. MCL equivalent? Nope. It's below 1, according to the
3 papers prepared by Meredith Durant. And how do we know there's
4 no risk? Well, let's ask Mr. Leserman.

01:26PM

5 In 2016 in Exhibit 1343, he told the DDW, quote,
6 "Although some of these wells have detectable concentrations of
7 constituents of concern, no discernible trends can be observed
8 at this time that would suggest a water quality change or any
9 new imminent threat to Saugus 1 and 2 wells."

01:26PM

10 So if there's no problem now, nobody expects there
11 to be a problem. And it goes beyond that. It goes all the way
12 to Meredith Durant who prepared the briefing paper for DDW on
13 behalf of the agency.

01:28PM

14 There is no imminent threat in 2016, there wasn't
15 one before, and there's none now.

01:29PM

16 Why -- and there's not going to be one in the
17 future. Why do we know that? Because state EPA, DTSC has
18 given us closure letters. And the closure letters are for the
19 work on site, in other words, the vapor extraction systems have
20 worked, the soil recovery systems have worked, we have removed
21 the bulk of the material, and anything else will be dealt with
22 by, as Mr. Daus said, the groundwater extraction systems that
23 are left on the site. You don't believe Mr. Daus. Believe
24 DTSC.

01:29PM

25 So this becomes the big question on damages. And my

1 guess is you're a little bit surprised if you see something
2 from "The Big Bang Theory" up there. This is my favorite
3 episode of the show. Sheldon finally convinces Amy Farrah
4 Fowler, which is the best name anybody ever had, to watch
01:29PM 5 "Raiders of the Lost Arc," which is one of Sheldon's favorite
6 shows. And Amy and Sheldon watch the show. And at the end of
7 the show, Sheldon said, "How did you like it?"
8 And Amy said, "Well, it was okay. But
9 Harrison Ford's character didn't change anything.
01:30PM 10 Indiana Jones, even if he wasn't there, everything would have
11 happened the same way." And Sheldon is crestfallen. But the
12 reality was she was right. And I was crestfallen.
13 But I'm going to ask you the same question. Let's
14 assume the VOCs were never there, let's assume the VOCs were
01:30PM 15 zero. What would be different?
16 And let's look at the wells. Saugus 1 and 2. If
17 there were no VOCs, what would have been different? Well,
18 nothing. According to Mr. Abercrombie, the wells are still
19 operating. Nobody has said shut the wells down.
01:31PM 20 How about blending at V-201? Well, oh, my God.
21 They've got to blend. Isn't that because of the VOCs? Well,
22 again -- oops. What Mr. Alvord says, well, yeah, I talked to
23 somebody at DDW, and they said that if you -- if we treat the
24 VOCs, it will be helpful, not that it will resolve the problem,
01:31PM 25 it will be helpful.

1 But he's then asked, "Well, when did you talk to
2 somebody?"

3 "Well, I don't know."

4 "What year?"

01:31PM 5 "I don't know."

6 "Could it have been August?"

7 "I don't know."

8 "Who else was at the meeting?"

9 "Uh, I don't know."

01:31PM 10 "Well, what was actually said?"

11 "I don't know."

12 Not credible. A mystery meeting. He doesn't
13 remember who, what, when, where, or how, but you should rest
14 your decision based upon that assertion. That's plaintiff's
01:32PM 15 argument.

16 But for V-205, the problem was perchlorate, not
17 VOCs.

18 And the part that I forgot to put up, if you recall
19 testimony from Mr. Abercrombie on V-201, what he said was --
01:32PM 20 which was actually supported by Ms. Durant and to a certain
21 extent by Mr. Alvord. Is what they're blending now -- they had
22 a blending program. And you saw in their -- in their permit
23 that they submitted in February of 20 -- of 2020. And what are
24 they blending for? Total dissolved solids, hardness. It's --
01:32PM 25 the water is too hard, too much grime in it.

1 And what DDW said, submit a blending program for
2 TDS, which they did. And as every witness testified who saw
3 that -- and incidentally, they argued it will resolve the VOC
4 problem. But the blending that is being done is not being done
01:33PM 5 to deal with VOCs, it's being done to deal with TDS.

6 So in the end of the day, 201 wouldn't have changed,
7 205 wouldn't have changed, S-1 wouldn't have changed, and S-2
8 wouldn't have changed. So like Indiana Jones, the VOCs here
9 just haven't had an impact. And it makes sense. The
01:33PM 10 detections are just too low.

11 So are we the source of those, though? Now,
12 Mr. Richard argues, well, A and B. But let's also take a look
13 at the site itself. And remember, this site has operated for
14 over a hundred years.

01:34PM 15 If you recall Mr. Jisa's testimony through
16 deposition yesterday, he testified that he was trying to get
17 that wheel, the dynamite wheel that was used during the gold
18 prospecting days, which was in the 19th century, the 1800s. So
19 people have been doing things there a long time.

01:34PM 20 Now, the law very logically says when you're
21 determining negligence, which is something a reasonable person
22 would do, you have to know when the act was done and what were
23 the circumstances. It's logical -- I mean, this -- I'll give
24 you a ridiculous example.

01:34PM 25 In 1800, if you had spilled some VOCs on the ground,

1 there is no way you could have been -- you could have been
2 negligent because nobody knew what VOCs were. They probably
3 weren't invented by then. You just didn't have the knowledge.
4 Science hadn't progressed.

01:35PM

5 You do it today, yeah, you're negligent. And
6 what -- what was the major difference? What changed? RCRA.
7 1980 when the RCRA regulations came out was a turning point.

01:35PM

8 And when you look at this case and when you look at
9 the liability of Bermite Powder and Whittaker -- and Whittaker
10 is responsible for the negligent conduct of Bermite Powder. I
11 want to say, negligent conduct. It's not strict liability.
12 Plaintiff still has to prove that Bermite Powder did something
13 negligent.

01:36PM

14 When you look at it -- again, this is what the Court
15 instructed you -- "Whittaker is, therefore, liable for any act
16 by Bermite that resulted in negligence, nuisance, or trespass."
17 All three of them require negligence.

01:36PM

18 Now, this also goes to burden. And burden of proof
19 is important. Plaintiff argues -- and basically whines that,
20 well, there's just not enough documents around. The fact that
21 there's not documents from somebody that operated a site in
22 1967 shouldn't surprise anybody. We've seen tons of documents
23 about Whittaker.

01:36PM

24 Well, plaintiff's whole case is built on documents
25 that Whittaker created and studies that Whittaker did and then

1 they complain they don't have enough information.

2 But regardless, their burden of proof, they've got
3 to prove it. If they expect Whittaker to follow the law,
4 they've got to follow the law too. What's good for the goose
01:37PM 5 is good for the gander. Whittaker is willing to step up and
6 say we owe you 3.1 million. Step up and prove we did the VOCs.

7 Whittaker is willing to put its head on the witness
8 stand? Do the same. Good for the goose, good for the gander.

9 And the fact is their own expert says I don't know
01:37PM 10 who did it. I don't know when it was done, and I don't even
11 know who buried the drums and I don't know when the landfills
12 were dug.

13 What you have here is the testimony of Dr. Hughto.
14 I'm not going to read it all. But what he -- what he basically
01:37PM 15 says was if you go to page -- line 20, on the first page,
16 it's -- okay. For instance, if we go to the -- under Summary,
17 if we go to the paragraph, the first one where it talks about
18 40 or more -- 40 years or more, landfills evidently were
19 anywhere from one day to possibly 40 years?

01:38PM 20 "ANSWER: Can you -- I didn't know where you
21 are.

22 "QUESTION: Sure. It's 4 -- it's 445.

23 "ANSWER: Oh, gotcha, the second paragraph.

24 "QUESTION: Yeah. Do you see where it says
01:38PM 25 40 years, sir?

1 "ANSWER: At the end of the paragraph?

2 "QUESTION: No. It's actually -- I guess
3 it's towards the end."

01:38PM 4 Okay. Then at the end he ends up saying, well, it
5 says the use of landfills evidently was anywhere from one day
6 to possibly 40 years or more.

7 When he was asked when were the drums buried, it
8 was, well, I don't know. Sometime within the century that the
9 place operated.

01:38PM 10 We know that VOCs were used on the site at least at
11 the time of the First World War. We know perchlorate was used
12 for the manufacture of fireworks. And we also know, if you
13 believe the reports of Ms. Stanin and Mr. Hughto -- or
14 Dr. Hughto, in their reports, they say that Whittaker stopped
01:39PM 15 using TCE in the late '60s and then used TCA. They readily
16 admit it. And then they run for the hills.

17 They're no different than Mr. Leserman and
18 Mr. Alvord, except they don't have the excuse it's their first
19 depo.

01:39PM 20 These are experts who have testified numerous times
21 who now, when it counts, when money is on the line, say, oh,
22 yeah, you know, I wrote that in my report and I thought it was
23 true at the time, but since then -- and this was -- I liked it
24 with Dr. Hughto -- since then, I've reconsidered it. And I've
01:40PM 25 looked at a document which I'm not sure really what it was and

1 now I've changed my mind. And then it was, well, is that a
2 document that's in your report? Uh, uh, uh, yes.

3 It's ridiculous. It's -- I -- I hate to say it, but
4 it becomes a question of integrity. Stand by what you
01:40PM 5 reported. At least Mr. Lechler did that.

6 Whittaker didn't use TCE after the late '60s. They
7 used TCA. That's what the evidence showed. And there is no
8 TCA contamination at the wells.

9 I don't think the words -- the letters TCA left
01:40PM 10 Mr. Richard's lips.

11 Just a reminder of the ownership. Manufacture of
12 dynamite in the 1880s. 1999, Whittaker sells the property
13 to -- I think it's SLLC. They're the people that went bankrupt
14 that resulted in the Imminent and Substantial Endangerment
01:41PM 15 Order. Whittaker then came back in and did the rest of the
16 remediation and has closed the site.

17 But, by the way, SLLC, they were the one that got
18 closed for OU-11. So they did a whole bunch of stuff. But
19 when you go through here, nobody can say that what was found on
01:41PM 20 the ground was put there by Whittaker, that the landfills were
21 prepared by Whittaker. And the evidence is, since TCA is not a
22 problem, Whittaker wasn't spilling solvents. If they were
23 spilling solvents, where's the TCA contamination?

24 There's some there because of the degreasers.

01:42PM 25 That's what Mr. Hughto talked about. But there's -- but

1 nobody's saying we've got to clean the groundwater up offsite
2 because of TCA.

3 Fireworks. There's fireworks all over the place.
4 The Hula Bowl, they had to dig up fireworks. There's dynamite
01:42PM 5 in places. We never manufactured dynamite. The 1997 study,
6 Exhibit 1411. If you look at the Hula Bowl, fireworks are
7 there. Mr. Jisa talked about dynamite problems.

8 But what we do know is there's -- that the reason
9 there's greater documentation after -- after 1976 and even
01:42PM 10 greater after 1980, there's a real good reason why. That's
11 when RCRA came up. RCRA was enacted in '76. There weren't
12 regulations, in other words, there wasn't flesh on the bones
13 until 1980. It was amended in '84. The first MCL for TCE was
14 1989. So there wasn't even a cleanup goal before 1989. And
01:43PM 15 the first MCL for perchlorate was in 2007 prior to the first
16 settlement agreement. We settled without knowing what the MCL
17 was.

18 And when -- and it's much more interesting when you
19 look at the timeline of what was going on. When we operated
01:43PM 20 the site, when we were testing for groundwater, we were doing
21 it basically in a regulatory snowstorm. Nobody knew what was
22 going on.

23 But we put material at the site. We put in
24 treatment facilities. We put in wells. It took a while to do.
01:43PM 25 But remember, this is where the technology was evolving.

1 You heard in the deposition, I believe it was of
2 Mr. Simmons, that we were using the C-Docks system which was a
3 revolutionary cleanup system where basically VOCs were taken
4 out of the air and destroyed. The reason it was revolutionary
01:44PM 5 is because in the '80s nobody really knew how to clean up VOCs.
6 It was at the beginning.

7 Today we know how to do it. Mr. Daus told you. We
8 could do it. We now know there are bugs, which I like to think
9 of as little Pacmen who go underground and gobble up. Not back
01:44PM 10 in the '80s. In the '80s, the technologies were new. And we
11 used the technologies that were available and even ones that
12 were at the edge of working.

13 We used extraction systems -- oops -- you know what?
14 I was wrong on that slide. That's a vapor extraction system.
01:44PM 15 That's a vacuum cleaner, basically. The same way you clean --
16 we use a vacuum cleaner to clean up pet hair on the carpet.
17 You use it, you put it in the ground and you suck up fumes.

18 And if you don't think it works, we've all spilled
19 gasoline on the ground when we're filling up our tank. Go to
01:45PM 20 the place to pay, come back, five minutes later and the
21 gasoline's gone. Nobody cleaned it up. It vaporized. It
22 is -- that's the same way with VOCs. That's the word
23 "volatile." They like to go and turn into vapor. And that's
24 why vacuums -- that's why SVE systems are so helpful.

01:45PM 25 And the result is that we've cleaned the place up.

1 Don't ask us. Ask DTSC.

2 Now, I want to talk about another source. That's
3 SIC. This is where they are. You can see how close they are
4 to the Saugus wells. And this is the plume that was drawn by
01:46PM 5 Mr. Lechler. It goes past Saugus 1 and Saugus 2.

6 And if you recall, Mr. Lechler testified, not really
7 cooperatively, but he testified about how the running of
8 Saugus 1 creates a pressure vacuum. And it -- all he would say
9 that it was possible, although he said more in his actual
01:46PM 10 reports, that that vacuum sucked the VOCs down in Saugus 1 and
11 Saugus 2.

12 And remember, as Mr. O'Keefe, the current head of
13 DDW said, the -- I'm sorry. That's wrong. It's Mr. Diaz at
14 DTSC said it. The greatest offsite source of VOCs, TCE in
01:46PM 15 particular, was SIC.

16 So we talked about Mr. -- or Dr. Trudell. Now,
17 Dr. Trudell testified that his -- in his opinion, SIC was the
18 source in the Saugus wells, just small. And in his -- and even
19 though he said it's a small source, he wouldn't admit that
01:47PM 20 there was a way that the small source got there, which was
21 different than he testified to in his report and in his
22 deposition.

23 And he said the reason he changed his mind was he
24 read the source report and he looked at what happened at AL-6.
01:47PM 25 Well, I asked Mr. Hokkanen, did the source report even mention

1 AL-6? No, it didn't, because the source report was about an
2 investigation on site. AL-6 was not on site.

3 So I don't know what caused Mr. Trudell or
4 Dr. Trudell to change his mind, but it certainly wasn't AL-6.

01:48PM 5 This is -- you know, we look at this SIC site. And
6 we can see really high numbers of chloroform and TCE offsite,
7 very, very close to Saugus 1 and Saugus 2.

8 And we know that the geology would effectuate a
9 divide. And by the way, what Mr. -- what Mr. Hokkanen
01:48PM 10 testified to is that the process of things moving from the
11 alluvium in AL-6 down to the well could have caused the
12 contamination. That was also confirmed by Mr. Lechler, and it
13 was confirmed by Dr. Trudell, at least until he testified.

14 Let's talk about Saugus 1 and Saugus 2. We heard a
01:48PM 15 lot of testimony about these arrows and what these arrows mean.
16 And Ms. Stanin, even though she put an arrow right through the
17 western boundary, said, well, that's not really through the
18 western boundary and that there should have been no TCE there.

19 Well, she has TCE there. But she has it there
01:49PM 20 because she didn't take into account the way plumes move. For
21 instance, we know dispersion. You know, we've all dropped some
22 water on a table. The water doesn't follow on the table in a
23 thin, thin, thin, thin line. It goes out. That's dispersion.
24 That's the same way it happens in an aquifer.

01:49PM 25 We know that as it changes, directions change, the

1 plume expands. And we know that just because the plume looks
2 one way one day, it doesn't look like that way another day.

3 And we know that these green lines, which were taken
4 from the report done by Mr. Lechler, which Mr. Lechler
01:50PM 5 described as a hypothetical pathway and later in the report he
6 referred to as cartoonish, aren't real, they're hypothetical.

7 And if we look at -- we look at the reports done by
8 AECOM, who Mr. Richard tried to say, well, they just work for
9 Whittaker but who Ms. Stanin referred to as reputable and
01:50PM 10 qualified; that what we see in the one plume map she used is
11 the aberration. And if we look at the other plume maps, the 12
12 others, what we see is a very wide plume. And we know that DCE
13 is on the site, the Whittaker site. It's not in the wells.

14 I'm sorry. And it is in the wells. And we know that
01:51PM 15 Ms. Stanin, at least in her deposition, testified that she
16 couldn't say that Whittaker was the source.

17 And we know that the chloroform -- by looking at the
18 western boundary, we know that Whittaker is not the source of
19 the chloroform.

01:51PM 20 So who is the source of the DCE and who is the
21 source of the chloroform? We don't know. The chloroform
22 likely could be SIC or companies around there. The DCE is a
23 mystery. But the experts for Whittaker -- I'm sorry -- for the
24 water agency, when they're asked, Don't you want to know? DCE
01:51PM 25 is a solvent. And if they used DCE, maybe they used other

1 VOCs. Their response is, well, it wasn't part of my job.

2 So that brings us to the plume map of Mr. Lechler.

3 And I just want to focus on the western boundary. Do you see
4 those three wells? He has them as non-detect. And do you see
01:52PM 5 that blue line? That's where the VOCs stop. His contour map
6 has the VOCs stopping before the western boundary. And so do
7 AECOM.

8 If we look at these, there are 12 of them. This is
9 the reputable and qualified company. Every single one of them,
01:52PM 10 that every single plume map done by anybody who studies this
11 site has the TCE at the site -- oh, by the way, the plume maps
12 are Exhibit 1459 -- has the TCE at the site stopping before the
13 boundary.

14 And we also heard lots of testimony about those
01:53PM 15 three wells -- actually, they're all clusters at the
16 boundaries. And every map that Ms. Stanin had, she had
17 positive concentrations for VOCs there for TCE. But we know
18 that she cherry picked. Why do we know that? We know that in
19 the ten years or so that these wells operated, there's only
01:53PM 20 about five hits of TCE. One in 2004, one in 2013, one in 2015,
21 and a couple in 2019.

22 We're not the source. Who's the source? Most
23 likely it's SIC and other parties but not us. Otherwise, that
24 boundary, that western boundary should be stocked with TCE,
01:54PM 25 which it is not.

1 How about 201 or 205? You know what? This one got
2 mixed up. This just says that SIC used 50,000 -- 50 million
3 pounds of VOCs annually.

4 (Videotaped deposition was played.)

01:55PM

5 MR. BLUM: Guess what? Another opinion he ran away
6 from in trial.

7 So he's dealing with the mall wells. And if you
8 remember, the mall wells are right up here (indicating). V-201
9 is here (indicating). And what this is here is a base -- a map
10 of a capture zone. When V-201 operates, it pulls water in.
11 That's what it's supposed to do. And it pulls water in from a
12 lot of different places. And this is in a two-year capture
13 zone. And this is what Mr. -- Ms. Durant said about the
14 effect.

01:58PM

15 (Videotaped deposition was played.)

16 MR. BLUM: According to Ms. Durant, mall wells were
17 in the two-year capture zone. There was contamination there
18 not from Whittaker. And the well has been operating for over
19 ten years. It's not a surprise that they found VOCs in 201.

01:58PM

20 That's the source. We don't know who -- who caused the
21 contamination there, but that doesn't mean the contamination
22 doesn't exist.

23 Whittaker is not the source. It's been the pumping
24 of 201 and the failure to take into account the contamination
01:58PM 25 that it was drawing in.

1 That brings us to 205. And there's -- that should
2 say TCE, sorry. That should say perchlorate and TCE.

3 So if we look at 201, perchlorate was there first
4 because it's faster and then TCE. Makes perfect sense. But if
01:59PM 5 we looked at 205, TCE got there first. That's impossible if
6 Whittaker is the source. TCE is -- 205 is past 201. There's
7 no way if Whittaker is the source for the TCE to have beat the
8 perchlorate there. It would defy the laws of physics. In
9 other words, in order for it to happen, the TCE would have to
02:00PM 10 have been turbocharged.

11 So what is -- what does that mean according to
12 Mr. Hokkanen? What it means is in 201 the perchlorate got
13 there from the west because it got there before the TCE. But
14 it didn't get there -- but for 205, the perchlorate had to have
02:00PM 15 moved from the east because it got there after the TCE got
16 there. And what Mr. Hokkanen said is this shows there's a
17 source that we don't know about.

18 And remember what the testimony is at the trial.
19 There's lots of sources of TCE. There's dry cleaners, there's
02:00PM 20 service stations, there's different industries. We don't know
21 all of them, but we do know that -- I believe it was
22 Mr. Lechler who said that dry cleaners were a notorious source
23 of PCE. And he said which can then become TCE. So it's not
24 surprising that there's other contaminants in the soil and in
02:01PM 25 the groundwater. And it's not surprising that some of these

1 contaminants made it to the wells first.

2 Turnouts and then I'm actually done.

3 Again, this is how the turnouts work. We're not
4 going to go over this again. We've done it ad nauseam. But I
02:01PM 5 just want to focus on the water turnouts. And I want to focus
6 on the fact that the witnesses testified that when the rubber
7 meets the road, it does it at the turnouts. DDW cares about
8 the turnouts. DDW had problems with the blending plan using
9 water from the SPTF because of the water at the turnouts.

02:01PM 10 And while the water at the turnouts isn't above the
11 MCLs, it certainly is a problem. It's a problem because of the
12 regulations. And when the -- and what the reports of
13 Dr. Steffey were, it was just basically to show that this is
14 not an isolated problem. And if you look at the data, you're
02:02PM 15 getting readings at these turnouts that are too high. And if
16 you care about providing pure water, you care that they're too
17 high.

18 And, in fact, if the district had followed the rules
19 that they set up in 2013 when Mr. Leserman then said "If a VOC
02:02PM 20 is detected higher than the maximum contamination Saugus
21 well" -- "Saugus Well 1 or Saugus Well 2, the turnout shall be
22 taken out of service and another investigation should be done."

23 Well, here's instances in which the reading at these
24 turnouts was higher than that at the effluent tank, which is
02:03PM 25 combined from S-1 and S-2.

1 Mr. Leserman's recommendations weren't followed.
2 They were never taken out of service, and there was never an
3 investigation. There wasn't even an investigation to follow up
4 on the one in 2012 when they said, hey, we found a lateral that
02:03PM 5 we never knew existed. So let's go look for other laterals
6 that we don't know exist. No.

7 Instead -- and this becomes their pattern, and we
8 saw it later on -- they get the contamination, they say, hey,
9 it's lab error. They don't investigate where there was lab
02:03PM 10 error, then hold their breath. In 2012, they got stung. And
11 later on, they just ignored the fact that it came back.

12 And when you look at what they predict, the fact
13 that there is -- time and time again they predict levels of TCE
14 and then the levels of TCE are too high. And what they do is
02:04PM 15 ignore it.

16 This is a letter or an e-mail from Mr. Koelewyn in
17 2014 in which he says this contamination at the turnouts cannot
18 be from the Whittaker site, cannot be from the SPTF. What
19 Mr. Leserman says is the same thing that was said originally in
02:04PM 20 2012, let's blame it on lab error.

21 And Mr. Alvord, who was the corporate representative
22 on the issue, testified that at the time he said this, there
23 was no evidence to support the existence of lab error. And all
24 that Mr. Leserman can say is, well, it was a bad choice of
02:05PM 25 words. It was the truth, just was bad to put it in an e-mail.

1 2015, more contamination found by Mr. Koelewyn.
2 That couldn't have come from Whittaker. He's ignored again.

3 In 2016, Matt Stone asks Mr. Leserman to send him
4 some information on the turnouts. And this is the key here.

02:05PM

5 The average effluent of PCE for the several years is .6, just
6 above the detection limit. And that's at the effluent tank.

7 If we look at the average at the turnout here, it's
8 ten times that number. The average number is ten times what
9 you find at the effluent tank. In the other turnout, it's

02:06PM

10 twice -- it's 200 percent.

11 So the head of the water agency is now aware that
12 they have a problem. Houston, we've got a problem. And
13 Houston says, I don't care.

02:06PM

14 Now, the inference is why don't they care? Because
15 it doesn't help them here.

16 If at the end of the day they were interested in
17 obtaining pure water, if it wasn't just a hypocritical position
18 in a jury trial, they should have been all over this issue. If
19 pure water is the goal -- and it is a noble goal. I do not
20 take issue with the fact that it's not a proper goal. But if
21 it is the goal, then -- this is at the point of contact with
22 your customers.

02:07PM

23 This is where the water goes, from your wholesale
24 system into the retail system. And this is the point where you
25 know that 10 percent of the time you're serving water that has,

02:07PM

1 as Mr. Richard said, a carcinogenic in it. And if your goal is
2 to serve pure water and if you really believe that there's a
3 risk here and you really believe that you're putting your
4 customers at risk, you don't sit on your hands. You don't
02:07PM 5 blame it on lab error. You get off your butts, you do an
6 investigation, and you try to find out who did it and you stop
7 it. And you don't say, hey, it's a pressurized system;
8 therefore, it can't happen. Well, it did happen. We know the
9 pressurized system in 2012 didn't stop the contamination from
02:08PM 10 the dry cleaner from getting into the system.

11 You know, it's like if I want to find out where
12 my -- if my son got in the house and I see him sleeping in his
13 bedroom, I know he got in the house. I -- and just because I
14 think all the doors are locked doesn't mean that he didn't get
02:08PM 15 in the house. And it doesn't mean that there's not an entrance
16 that I don't know about.

17 Well, the VOCs in that system 10 percent of the time
18 at numbers that would trigger an investigation that their own
19 senior engineer said should happen is knowledge that the person
02:08PM 20 is in the house. The burglar broke in. And the mere fact they
21 don't know how doesn't mean the burglar is not there.

22 And their only retort is blame it on nonexistent lab
23 error or hope it disappears the next time.

24 And, by the way, when they claim confirmation
02:09PM 25 sampling, they're lying. It was not confirmation sampling. It

1 was just the sampling time.

2 So when Mr. Richard gets up and talks about their
3 goal of serving pure water, think about it. Is it hyperbole or
4 hypocrisy?

02:09PM

5 Damages. When you're considering the damages to
6 property -- we talked about the water and we talked about the
7 land. And you must -- the word is "must" -- must consider the
8 expense and time involved to restore the property to its
9 original condition -- and this is what I'm going to focus on --
10 compared to the value of the property.

02:10PM

11 So, in other words, is it reasonable to spend -- and
12 I'm going to be ridiculous here -- \$12 trillion to repair a
13 property that's worth a dime? No. But what they need to do is
14 say, okay, the cost to repair -- and I -- 17, 18, 20,

02:10PM

15 \$25 million. Okay. What's the value of the property? What's
16 the value of the land?

17 You know what? We don't know. There's zero
18 evidence on that value. None. There is no way for you to
19 determine reasonableness in this case. It's impossible because
20 plaintiff didn't put on any evidence. No evidence.

02:10PM

21 So as a result, you can't award them damages. And
22 I'll say it again, that might be drastic, but plaintiffs spent
23 their whole opening telling you about how we didn't follow the
24 law and we should. Well, you know what? So should they.

02:11PM

25 You're going to get a special verdict form. This is

1 what it looks like. It's several pages back to back. It deals
2 with each cause of action that the plaintiffs have decided to
3 bring. We follow along with them. It's nothing that we can
4 do.

02:11PM

5 But each of those questions in each of the causes of
6 action you're going to be asked: One, was there any harm here?
7 Did the VOCs cause any harm? Did the perchlorate cause any
8 harm other than 205 where it's -- we should be paid for that?
9 No. But 201, we're the ones who have already paid for the

02:12PM

10 perchlorate system.

11 And the blending that they talk about, it's not
12 because of VOCs. It's because of TDS. For Saugus 1 and
13 Saugus 2, we've already built them their perchlorate system.
14 The VOCs, no harm. Is -- have the VOCs caused any human health
15 effect? No. No. I don't know how many times I could say no.

02:12PM

16 Even the plaintiffs don't say they have. If they did, you
17 think they wouldn't have had a toxicologist on the witness
18 stand to tell you how bad things were? But they didn't. And
19 their failure to put one on the stand tells you what the answer
20 to the question would be.

02:12PM

21 You're going to be asked whether or not they own
22 property because for at least two of the causes of action, it's
23 a requirement. What did they own? Was it an easement? Was it
24 a license? Was it just something else? Was it fee simple? I
25 can go through all the different conditions I learned in law

02:13PM

1 school, and the answer to every one is going to be "I don't
2 know."

3 And you're going to be asked whether or not
4 Whittaker was the cause. And the answer to that is no. We
02:13PM 5 were not. They have not met their burden. They haven't
6 explained other -- other than by hypotheticals and theories why
7 those border wells have no contamination. That's not only the
8 border wells.

9 Remember, there's a sentry well right next to
02:13PM 10 Saugus 2. And while the CW wells may have been disputed, they
11 never told you why there was no VOCs found in those sentry
12 wells in -- remember, in the aquifers there that mean anything
13 here.

14 At the end of the day, ladies and gentlemen, this
02:14PM 15 case is as much about credibility as it is about science.
16 We're not scientists, you know. And although I may have stayed
17 at a Holiday Inn and I may have seen a lot of television shows
18 and I may have spent a lot of time with Mr. Hokkanen with him
19 teaching me, he's still the hydrogeologist.

02:14PM 20 And Ms. Stanin is clearly knowledgeable, Dr. Trudell
21 is clearly knowledgeable. You never heard me say they weren't
22 qualified. The difference is how can you believe Dr. Trudell
23 when half of the time he runs away from statements he made
24 under oath several months ago? Same thing for Ms. Stanin.

02:15PM 25 And, unfortunately, the same thing for Dr. Hughto.

1 Either they were incompetent a year ago when their
2 depositions were taken or they decided to testify however is
3 needed to help out the plaintiff. That Ms. Stanin just decided
4 they're a long-term client, this is what they need to do.

02:15PM

5 I don't know. That's something for you to decide.
6 But at the end of the day, come back with a verdict in favor of
7 the plaintiff of \$3.1 million. They deserve it.

02:15PM

8 We didn't do the VOCs. And it's not running away
9 from responsibility. There is nothing wrong with Whittaker
10 saying I didn't do it. And whether or not you believe in the
11 end we didn't do it or not, you cannot say that it is in bad
12 faith that we're making the argument because it's the same
13 argument that Mr. Leserman made in 2010. It's the same
14 argument that Mr. O'Keefe made a few months later. It's the
15 same argument the engineers made for Todd in 2013. And it is
16 the same argument Mr. Lechler made in 2015 and when he
17 testified four years later.

02:16PM

18 And there's been no new investigation done other
19 than taking readings from the same location. Mr. Lechler told
20 them how to prove it. DTSC told them how to prove it. And
21 they walked in here ignoring the advice and are asking you,
22 because they're a water agency and we're a big bad corporation,
23 to ignore the evidence because they want to supply pure water.
24 Or at least they want to tell you they want to supply pure
25 water.

02:16PM

02:17PM

1 I really thank you, ladies and gentlemen. This was
2 not an easy task. There was a lot of science. I'm sure there
3 was some stuff that you heard that you looked at and was, like,
4 what the hell does that mean? I know it was from me. But you
02:17PM 5 listened, you listened attentively and through a pandemic when
6 a lot of people would have ran from jury service.

7 My grandmother would say mazel tov. And I would
8 thank you for your service.

9 THE COURT: Ladies and gentlemen, we are going to
02:17PM 10 take a break. We have lunch ready for you. And we will break
11 until 2:00 o'clock.

12 There is not much more, but there is a rebuttal
13 closing argument. And you will be deliberating this afternoon.

14 Remember, don't speak to anyone about the case, the
02:17PM 15 people, or the subject matter involved. Continue to keep an
16 open mind.

17 And you're not permitted to deliberate at this
18 point. So please wait until you've heard rebuttal closing
19 argument.

02:18PM 20 Thank you.

21 THE COURTROOM DEPUTY: All rise for the jury,
22 please.

23 (Out of the presence of the jury:)

24 THE COURT: Please be seated.

02:18PM 25 We're outside the presence of the jury.

1 Mr. Richard, you have 36 minutes left. And Mr. Blum
2 just came a few minutes under the two hours. So you have, by
3 my watch, 36 minutes.

4 We're in recess until 2:00 p.m. Thank you.

02:18PM

5 (Break taken.)

6 (In the presence of the jury:)

7 THE COURT: On the record in Santa Clarita Valley
8 Water Agency versus Whittaker Corporation with all present who
9 were present before the break. We have an addition as well.

02:03PM

10 And the jury is present, and we are on rebuttal closing
11 arguments.

12 So, Mr. Richard, you may present your rebuttal
13 closing argument.

14 MR. RICHARD: Thank you, Your Honor.

02:03PM

15 Let's see. Do we have liftoff? We're getting
16 close. I will be brief.

17 In thinking about how best to respond to the two
18 hours or so that we heard from Whittaker's attorney, it
19 occurred to me that one of the points he made in talking about
20 the witnesses I would start with, and that's with Dr. Hughto.
21 Because in their opening statement, Whittaker's counsel said
22 TCA, TCA, TCA. You didn't hear it pass from Mr. Richard's
23 lips. Now you've heard it.

02:03PM

24 The point is, if we follow the evidence, Dr. Hughto
25 testified -- he's been dealing with these types of industries

02:04PM

1 for 40 years -- generally went from TCE. We don't know how
2 many 55-gallon drums they had of it, you know, how long were
3 they using, into the '60s, early '70s, then PCE. Then there
4 were concerns about that and then TCA. That's what he
02:04PM 5 testified to. That's what the evidence shows.

6 But on this issue, when Dr. Hughto was on the stand,
7 Mr. Blum said didn't you say in your deposition it went from
8 TCE to TCA? And he said -- and he was reading to him from his
9 report. And it was the top of page 4. And Dr. Hughto said,
02:04PM 10 well, the sentence actually begins at page 3. And so I thought
11 that's where I should start.

12 So when he read him the question at trial, Whittaker
13 initially changed from TCE use to TCA. And then he said, well,
14 I'm just quoting this other report by someone that I've gone
02:05PM 15 back and looked at to see what their source was. This was not
16 an opinion Dr. Hughto expressed. He was describing background.

17 So he did the right thing. He talked about this
18 report didn't rely on data. It talked about one former
19 employee.

02:05PM 20 So it's an example of -- I guess if we're going to
21 have quotes, the one that comes to mind is from Ben Franklin.
22 The only thing worse than a lie is a half truth. And this is
23 literally a half truth, isn't it? We see part of a sentence.
24 And then he says, no, I'm relying on someone else. I didn't
02:05PM 25 reach this opinion. I haven't looked at the data. I haven't

1 looked at storage records.

2 So many of the points we just heard make that same
3 point. And so I'll just go through a couple of them.

4 The jury instructions will show for you that, if
02:05PM 5 Whittaker wants to have an excuse that SIC is a source, then
6 it's their burden to show more likely than not by a
7 preponderance of the evidence that SIC was, in fact, a source,
8 not they're nearby, they contaminated the alluvial aquifer, not
9 the deeper aquifer. He never did address, well, why is it
02:06PM 10 those two main chemicals there, vinyl chloride and DCA, don't
11 show up in our client's wells, et cetera?

12 So I asked Dr. Hokkanen, do you think SIC is a -- is
13 a source? I did not conclude that it was or was not a source.

14 So that's an example of not more likely than not.
02:06PM 15 He's saying it could be either.

16 So on that issue, is SIC a source, there's a total
17 failure of proof.

18 More fundamentally, it doesn't matter. Why doesn't
19 it matter? Because Whittaker, with their thousand-acre site,
02:06PM 20 their 300,000 pounds of TCE in the ground -- and Mr. Blum told
21 you, I'm sure it wasn't intentional, that most of that or all
22 of it has been removed.

23 The testimony is, of the 300,000, at most
24 100,000 pounds have been removed. The rest of it's in the
02:07PM 25 soil.

1 So there is no other thousand-acre site with an
2 80-year history of massive disposal of these chemicals.

3 So -- but as long as -- and I've never argued that
4 Whittaker is the source. That's not our burden to prove
02:07PM 5 they're the only source. Are they a substantial source? Are
6 they more likely than not a substantial factor? You'll have to
7 decide that. I think the evidence tells us that they are.

8 I'm just putting these two numbers up because the
9 last argument we heard was in 2010 the water agency didn't
02:07PM 10 know. In 2010, they got a bid. They weren't sure of whether
11 Whittaker was the source. That's true. That's why we heard
12 from B.J. Lechler yesterday. He did a study in 2015, which is
13 five years after 2010.

14 So in 2010 and 2011, before they got that study,
02:08PM 15 e-mails or documents that say I'm not sure Whittaker's a
16 source, I'm not sure the point because then they got the study.
17 And that study is Exhibit 34.

18 It's probably on this issue the most important
19 exhibit because so much of what you heard, he didn't conclude.
02:08PM 20 He said it was only potential. Page 34 of Exhibit 34 sets it
21 out, black and white. And he just sat here yesterday,
22 repeatedly saying I stand by my report.

23 So I don't know what the issue of integrity or the
24 concern was other than he wasn't agreeing with Whittaker's
02:08PM 25 attorney. His report was clear. He stands by his report. And

1 there was also some, again, just minor confusion. But the
2 point I made in my comments to you was that Mr. Lechler was
3 asked about the word "potential." Didn't you say it was a
4 potential source? Wasn't talking about did you testify it was
02:09PM 5 a possibility or a likelihood. It was simply the questioning
6 of Mr. Lechler yesterday where he finally said this is just
7 semantic adjectives.

8 It was a potential source in part of his report.
9 Mr. Blum just told you, which is kind of surprising because
02:09PM 10 you're going to read this report. It wasn't just a who are the
11 potential sources. It was two parts. He talked about the
12 scoping part and then the investigation part. And he set that
13 out. It was actually up on the page that you were shown from
14 the report.

02:09PM 15 So he said there was a screening part of the
16 process. I ruled out a lot of other folks in the area. I got
17 it down to these two. And I found, based on all the evidence,
18 multiple lines of evidence, that it was Whittaker. I don't
19 know what the mystery is. That was his finding in 2015.

02:09PM 20 There was a conclusion that there's multiple lines
21 of evidence to suggest that Whittaker, the former
22 Whittaker-Bermite facility, is the source of TCE in Saugus 1
23 and Saugus 2. That's what he said yesterday, testified to
24 that.

02:10PM 25 He also said when asked about shouldn't the water

1 agency have been investigating, Mr. Lechler, who's been working
2 in this basin for 20 years -- he didn't look like it, but he's
3 been around for a while. "Typically it's the responsibility of
4 the polluter to characterize the full extent, both vertically
02:10PM 5 and laterally, where they've impacted the groundwater."

6 I think the evidence tells us that Whittaker was
7 somewhat resistant to doing this and still has not done this.
8 He pointed out that north of the area, there's still no
9 monitoring wells. That's why he put his question marks on his
02:10PM 10 plume map.

11 Chloroform, why does this matter? He keeps saying
12 there's no chloroform at Whittaker. If there's chloroform in
13 our wells, it must have come from SIC. Well, again, in the
14 Lechler report at page 55, there's all these green dots showing
02:11PM 15 chloroform, not just up at the northern area here, which he
16 thought was the most likely source of the contaminants to leave
17 the Whittaker site, but there's chloroform throughout.

18 So you've got to be a little careful if someone's
19 going to stand here and tell you there's no evidence of
02:11PM 20 chloroform at the Whittaker site other than -- other than the
21 evidence that we're looking at, I suppose.

22 Yesterday we heard from Mr. Simpson -- or yesterday
23 or the day before. And he was kind of a twofer for Whittaker.
24 Right? He's the fellow that worked with Mr. Lardiere for
02:11PM 25 17 years. And so he testified a bit about this process,

1 97-005, extremely impaired water source. The well went down at
2 V-201. They don't have their permit.

3 And what he was asked -- well, what did -- what did
4 you learn from DDW about that? He was candid. He said there
02:12PM 5 were concerns about VOCs in the water. And then there's some
6 follow-up questions to -- try to backtrack from that. There's
7 no question that, if there were no VOCs, they'd get their
8 permit. Keith Abercrombie testified, yeah, they told us we'd
9 get it mighty quick or pretty quick if we could remove those

02:12PM 10 VOCs. That's the truth. That's the reality.

11 So -- um, the other thing that Mr. Simpson -- so we
12 talked about his participation in some of those meetings. To
13 suggest that -- I mean, he described his own method of starting
14 with a project, completed four years ago that did not involve
02:12PM 15 buying any new vessels for treatment of a different chemical,
16 that you start with that and then make some adjustments and
17 extrapolations that don't include any contingencies. He
18 actually admitted it was a nonstandard method. I mean, they
19 had to redo them from his deposition. Yeah, it's nonstandard
02:12PM 20 because that's not how you do it.

21 You'll have to decide if it's like buying a car. To
22 me, I thought, you know, the evidence that -- from Dr. Najm and
23 others that, no, these are actually construction projects.

24 And Dr. Najm did start with -- he's been doing
02:13PM 25 this -- this is what he does for a living, working with

1 agencies to put in treatment to remove contaminants.

2 He does start with the actual costs -- right? -- the
3 \$200,000 a vessel and the rest. And then he applies his
4 knowledge of -- based on those costs for equipment, he uses the
02:13PM 5 equipment factored approach.

6 So this is not some mystery. This is a standard
7 approach taken if you want to have a fair cost estimate. And
8 that's what's been presented to you all.

9 So -- but if you think it's like buying a car, you
02:13PM 10 know -- Mr. Abercrombie -- this is the rest of the testimony
11 that you weren't shown when he was asked.

12 *"So you have no opinion as to whether the*
13 *water you're serving is safe?"*

14 *"My opinion is we need to treat it."*

02:14PM 15 So it's true, he's not a doctor, but he repeatedly
16 said we need to treat it.

17 And the suggestion that the water agency's doing
18 nothing, they're just serving this -- I forget what the
19 adjectives were -- that they blend. They have to purchase
02:14PM 20 water to blend with the water from Saugus 1 and Saugus 2. They
21 have a permit requirement to get down to non-detect. Right?
22 That's the .5 parts per billion. It's not the MCL or the
23 public health goal. It's non-detect. It's in their permit.

24 So that's why they blend. They try to blend it out
02:14PM 25 to get down below non-detect, and it's not working all the

1 time. That's why Mr. Abercrombie over and over said we're at
2 the point where we need treatment to remove it.

3 The last couple points I want to make are -- oh.
4 Exhibit 1427, I'm not even going to pull it up. You were shown
02:15PM 5 a letter from May 1985 from DTSC, I think, saying you don't
6 need to do water monitoring. Right? And he showed that to
7 you. Oh, look, they didn't have to do water monitoring in
8 1985.

9 Well, when you read the fine print, that was because
02:15PM 10 at that time Whittaker had not yet told the regulators that
11 they had landfills with hazardous materials. What they -- they
12 had closed impoundment -- and this is in the exhibits, in the
13 1986 notice and in the 1999 enforcement -- in the 1990
14 enforcement action and in Exhibit 1, the 2002 Substantial
02:15PM 15 Endangerment Order. They closed that impoundment without
16 Mr. Sorsher, without DTSC knowing in 1983, two years before
17 that letter.

18 So that's another example of kind of a half truth.

19 The regulators didn't tell them in 1985 that they
02:16PM 20 needed groundwater monitoring. Well, right. You didn't tell
21 them you were closing the impoundment. You told them there
22 were no hazardous substances. And you never gave them the
23 Bob Bean memo.

24 And I listened very carefully. I didn't hear
02:16PM 25 anything from Whittaker about the 1982 memo which sets it out,

1 you got a problem, it's going to migrate to the aquifer,
2 et cetera. I didn't hear him talk about Joe Alibrandi,
3 president of Whittaker for quite a while.

02:16PM 4 So what I did hear is, um, at one point -- oh. The
5 Wells V-201 and V-205, it would be -- it's impossible for the
6 TCE to have traveled to one and then the other. Um, we had
7 Ms. Stanin explain in some detail -- and all the experts agree
8 the impact that pumping has when it's on or off on that
9 aquifer. And she put up her circles and she talked about a
02:17PM 10 cone of depression and how it can go by.

11 Someone who tries to tell you that something's
12 impossible with respect to groundwater when you have these
13 pumps that are on, these extraction wells, on and then off --
14 Saugus was off for 14 years, contaminants move in a certain
02:17PM 15 way. Then they go back on, it moves a different way.

16 So, you know, you heard that testimony. You have
17 heard a lot of figures on that point. But to call it -- it's
18 physics, it's simple physics, doesn't square with the evidence.

19 The -- the last point -- and look, there were a
02:17PM 20 number of other points that fall in the category of, you know,
21 it's -- it's a half truth. I think the B.J. Lechler report
22 puts most of that in perspective.

23 But I thought I heard Mr. Blum say that Mr. Richard
24 said Whittaker never accepts responsibility. And I've never
02:18PM 25 said that. I just think Whittaker needs a little encouragement

1 from time to time. And I think that's why we're here.

2 I think the evidence tells us that eventually
3 Whittaker will pay. If there is a ruling against them, then
4 they'll pay and then they'll tell someone else that they took
02:18PM 5 responsibility.

6 So I think that's what the evidence tells us. I
7 wish we could have a Q&A on this, but that's not how it works.

8 So again, on behalf of my client, I appreciate your
9 time and attention. I know you'll work through the evidence
02:18PM 10 and reach a just outcome in this important case.

11 Thank you.

12 THE COURT: Members of the jury, you have now heard
13 all of the evidence as well as the arguments.

14 There is some possibility that I may need to address
02:18PM 15 you again with regard to jury instructions. I don't have
16 anything specific in mind. I just know it happens from time to
17 time. If that happens, you'll be notified and you'll come out
18 here, and it likely won't be very long.

19 But at this point, I'm going to have you return for
02:19PM 20 deliberations. But the first order of business is I'm going to
21 have my courtroom deputy, Mr. Cruz, please have the bailiff
22 step forward so he could be sworn in so that he can take charge
23 of you and they will give you directions.

24 Thank you.

02:19PM 25 THE COURTROOM DEPUTY: Sir, do you solemnly swear to

1 keep this jury together in some private and convenient place,
2 that you will not permit any person to speak or to communicate
3 with them, nor do so yourself, unless by order of the Court or
4 to ask them whether they have agreed upon a verdict and that
02:19PM 5 you will return them into court when they have so agreed or
6 when ordered by the Court, so help you God?

7 THE BAILIFF: I do.

8 THE COURTROOM DEPUTY: Thank you.

9 For the record, please state your name and spell
02:19PM 10 your last name.

11 THE BAILIFF: David Williams, W-i-l-l-i-a-m-s.

12 THE COURT: Would you kindly take charge of the
13 jury? Thank you.

14 THE COURTROOM DEPUTY: All rise for the jury,
02:20PM 15 please.

16 (Out of the presence of the jury:)

17 THE COURT: Please be seated.

18 We are outside the presence of the jury.

19 There are a few items I wanted to address with the
02:20PM 20 parties. The first involves the exhibits. The Court has a
21 list which I understand was prepared by the plaintiff as to the
22 exhibits in evidence. So let me hear from the plaintiff
23 whether this represents the agreed-upon list of exhibits that
24 will go to the jury.

02:21PM 25 MR. RICHARD: I believe so. I think we added the

1 maps that they raised last night. But if we missed something,
2 I'm sure they'll let us know. There was an issue about the
3 redacted documents. We hadn't yet received those; so I hope
4 that the originals have been swapped out by Whittaker.

02:21PM

5 THE COURT: All right. Well, I received from
6 Mr. Cruz a document that he claims was given by the plaintiff,
7 I believe, after he worked with your respective paralegals
8 until early evening yesterday. And so my understanding is this
9 is a manifestation of the product of it. So it is now time for
10 the jury to deliberate, so I need to sew this up.

02:21PM

11 MR. RICHARD: That's my understanding as well,
12 Your Honor.

13 THE COURT: So unless there's an objection, I am
14 going to settle these exhibits in a manner of speaking, and
15 these are the exhibits that are going to go to the jury by
16 agreement of the parties that it reflects the state of the
17 record with respect to every exhibit on this list.

02:21PM

18 Mr. Blum?

19 MR. BLUM: That's correct, Your Honor.

02:22PM

20 THE COURT: Very well. Then let's turn to the final
21 jury instructions.

22 The Court did provide the final instructions that I
23 intend to present to the jury which should coincide with what
24 the Court read to the jury. Let me hear first from the
25 plaintiff.

02:22PM

1 MS. SCOTT: Yes. Thank you, Your Honor. We just
2 had a question.

3 As to the final Instruction No. 26 which was
4 plaintiff's property interest, we had understood the Court's
02:22PM 5 order this morning was that the instruction would be given but
6 that it would be limited only to the trespass and nuisance
7 claims and that there would be some indication that it was not
8 applicable to negligence.

9 THE COURT: Well, it's 25 at least from what I have
02:23PM 10 unless I have a different version. And it says, "For plaintiff
11 to recover restoration damages on its trespass and/or nuisance
12 claims." That's how I translated what the Court's ruling was.

13 MS. SCOTT: Understood. Thank you, Your Honor.

14 THE COURT: All right. Is it No. 26 for you?
02:23PM 15 Because it's important that the parties have an opportunity to
16 review the final instructions that I will be presenting to make
17 sure that it does, in fact, accurately reflect the record.

18 MS. SCOTT: The copy we have, Your Honor, is the one
19 that was passed out in hard copy this morning before it was
02:23PM 20 finalized. Has there been another hard copy distributed?

21 THE COURT: There should have been. Let me make
22 sure that you have a copy of that. There was a final set. I
23 thought that was printed out, but let me make sure.

24 MR. BLUM: Your Honor, we have the one that says 25.

02:24PM 25 THE COURT: All right. Did -- I'm getting

1 confirmation that you should have received the final
2 instructions along with a copy of the verdict form.

3 Let me see if perhaps there's an error -- let me ask
4 Mr. Gallagher, which -- which number do you have as the
02:24PM 5 plaintiff's property interest?

6 MR. GALLAGHER: It is 25, and there was an e-mail
7 sent that was just -- it's possible someone missed it and --
8 but we have the right copy. It is 25.

9 THE COURT: All right. And so do you approve the
02:24PM 10 instructions? What I mean approve, that it accurately reflects
11 the record?

12 MR. GALLAGHER: Yes, Your Honor.

13 THE COURT: All right. And, Ms. Scott, I don't know
14 that you can answer that question. But maybe what you can do
02:24PM 15 is take a quick look at the -- I'll give you an opportunity
16 after we conclude here, just a few minutes or whatever you
17 reasonably need, just to peruse it to make sure that you agree
18 as well.

19 Now let's turn to the special verdict form. And
02:25PM 20 this was intended to reflect the Court's thoughts after
21 reviewing the damages -- the interrogatories with respect to
22 damages based upon Whittaker's submission. But before I ask
23 the parties about their agreement or disagreement with the
24 current version, let me raise a question that very well may
02:25PM 25 enter the jury's mind about this form, is where on this form do

02:26PM

1 the parties anticipate that, if Whittaker prevails, that the
2 jury is going to be able to get to where Mr. Blum suggested
3 they should go? And since that question plainly should be
4 directed to you, Mr. Blum, maybe you can answer the Court's
5 question.

02:26PM

6 So are they going to -- they're going to have to
7 find that your client was negligent, engaged in trespass or
8 nuisance presumably in order to render a damage amount. You
9 told them that they should return a verdict in favor of the
10 plaintiff in the amount of \$3.1 million. And so tell me what
11 your thought process is as to how they're going to complete
12 this verdict form.

02:26PM

13 MR. BLUM: Your Honor --

14 THE COURT: Assuming you prevail.

15 MR. BLUM: I'm not sure you're going to like my
16 answer, but I don't know because the problem is this is a very
17 complicated form.

02:27PM

18 THE COURT: It's not complicated. It's actually
19 quite consistent with the CACI form. I think what's
20 complicated is that -- and I don't mean this critically. It's
21 just a factual description -- is that you've denied liability
22 but you've essentially conceded liability. So you said, we
23 didn't do anything wrong other than with perchlorate, but you
24 didn't really then take the next step and say we were, what,
25 negligent or my client was negligent and, therefore, you should

02:27PM

1 award \$3.1 million? They trespassed.

2 They -- I mean, you didn't take the next logical
3 step which is how do you square what you were telling them with
4 regard to taking responsibility and awarding \$3.1 million and
02:27PM 5 saying that essentially you -- your client has no liability.

6 MR. BLUM: Your Honor, my -- the totality of my
7 argument was other -- was basically on VOCs. They can say as
8 to negligence we were negligent as not dealing with the
9 perchlorate and award the damage.

02:28PM 10 THE COURT: Well, I suspect that they may wonder
11 about that. I do think that that would be the only rational
12 way to interpret this. But it seems to me, at least, that
13 there may be a question in their mind as to -- as to how they
14 get there.

02:28PM 15 MR. BLUM: Your Honor -- and this is not casting
16 blame on anybody. The problem is I didn't get the special
17 verdict form until pretty much right before I started. So I
18 wasn't able to incorporate -- normally I would have
19 incorporated it into my argument, and I would have told them
02:28PM 20 how to go through it. But the only way -- they can do it, but
21 they don't have any guidance from me on it.

22 THE COURT: Just so the record is clear, first of
23 all, the parties agreed to the special verdict form --

24 MR. BLUM: Yes.

02:29PM 25 THE COURT: -- with the exception of damages. The

1 Court, just before you argued, presented you with the special
2 verdict form.

3 MR. BLUM: Uh-huh.

02:29PM

4 THE COURT: And simply indicated on the damages,
5 which is segregated, that that hadn't been decided because it
6 hasn't been decided.

02:29PM

7 So I don't know that that's quite a crutch to be
8 used, but it makes no difference. The fact of the matter is
9 we'll see where the jury is. I'm just raising this with the
10 parties because it may or may not be an issue. They may be
11 thoughtful enough, if I were going to come out in favor of
12 Whittaker, I would find that Whittaker is liable for whichever
13 claim or claims, and then I would write in \$3.1 million --

14 MR. BLUM: Uh-huh.

02:29PM

15 THE COURT: -- if I agree with you.

16 MR. BLUM: Your Honor, by the way, I wasn't -- I
17 wasn't trying to use it as a crutch or an excuse. All I was
18 saying is normally it would have been -- and it's totally my
19 fault. I shouldn't have waited. I would have walked them
20 through it, and that's the only thing I can -- I didn't do.

02:30PM

21 THE COURT: All right. Well, let's see where we
22 are. It may be a nonissue for a variety of reasons. I'm just
23 raising it with the parties to see if there's any concern that
24 you wish to express or any remedy that you wish to propose.

02:30PM

25 MR. BLUM: No.

1 THE COURT: Mr. Richard?

2 MR. RICHARD: Oh. No, Your Honor.

3 THE COURT: All right. So let's turn to the verdict
4 form as it is in its current form. And let me hear whether
02:30PM 5 anyone has an objection or a request for modification.

6 MS. SCOTT: No objection, Your Honor.

7 THE COURT: And, Mr. Blum?

8 MR. BLUM: Can I just -- just a moment, Your Honor.

9 THE COURT: Yes.

02:31PM 10 MR. BLUM: Your Honor, I think just there's a word
11 missing on line 27.

12 THE COURT: On question 27?

13 MR. BLUM: Yes. Yes, sir. I think after the word
14 "negligence claim," it should be "of damages" or "for damages."
02:31PM 15 But that's minor.

16 THE COURT: Well, it's still important. Let me see.

17 MR. BLUM: Question 27.

18 THE COURT: Yes.

19 MR. BLUM: I'm sorry. It's -- right here.

02:32PM 20 THE COURT: Let me suggest -- one moment. This is
21 what the plaintiff has proposed, but it is awkwardly worded.

22 Let me suggest this. I haven't looked at it in its
23 totality, but since this is falling under damages, "Was the
24 conduct of Santa Clarita Valley Water Agency or
02:32PM 25 Saugus Industrial Center a substantial factor in causing

1 damages" and take out the negligence claim.

2 MR. RICHARD: Well, it only applies to the
3 negligence damages; is that right? Or is this all in the
4 negligence section?

02:32PM 5 MS. SCOTT: This is the total damages.

6 MR. RICHARD: Yeah. So I don't think that would be
7 a correct statement of the law, Your Honor.

8 THE COURT: All right. I'm looking at it in
9 isolation; so you very well may be right, Mr. Richard.

02:33PM 10 MR. RICHARD: We could suggest damages for
11 negligence or for the negligence claim.

12 THE COURT: I think that's probably better.

13 MR. RICHARD: I'm not an English teacher.

14 THE COURT: How about if -- how about if I just say
02:33PM 15 "On the negligence claim was the conduct of Santa Clarita
16 Valley Water Agency or Saugus Industrial Center a substantial
17 factor in causing damages?" If it's just limited to that
18 claim.

19 MR. RICHARD: Yes, Your Honor. That makes good
02:33PM 20 sense.

21 THE COURT: Mr. Blum?

22 MR. BLUM: That's fine, sir.

23 THE COURT: All right. Very well. I'll want to --
24 if I have a moment after we recess, I'll want to take a look at
02:33PM 25 this in the context of the entire special verdict form. But

1 otherwise, I'm going to consider this settled. So unless
2 there's an issue that occurs to the Court, the special verdict
3 form is settled and presented without objection as to the -- as
4 to the form of the -- of the verdict.

02:34PM

5 I believe that is all that the Court has to address
6 at this point. But let me hear from you, Mr. Blum, since
7 you're rising.

02:34PM

8 MR. BLUM: Your Honor, we had just discussed that
9 after closing would be the time for me to formally make the
10 directed verdict motion.

11 THE COURT: Yes.

02:34PM

12 MR. BLUM: And I would make it on the same grounds
13 that we made the JMOL, but I would add that, in terms of the
14 damages, there's no basis for determining what is reasonable
15 because there's no fact, there's no evidence as to what the
16 value of the property is as well as the -- if the Court wants
17 me to repeat it, I will repeat it. But the basis -- the
18 usufructuary argument we had earlier this morning, I don't
19 believe they've proven any damage to either the usufructuary or
20 their property rights, and nor have they established any
21 property interest at all.

02:35PM

22 THE COURT: Yeah. Let me -- before you leave, let
23 me give you an opportunity, if you wish, to be heard as -- I
24 don't know that I'm going to hear from the parties again before
02:35PM 25 I make a final determination on the JMOL as originally

1 presented or as now renewed.

2 MR. BLUM: Your Honor, I don't know if -- I don't
3 believe a written paper is necessary in order to bring the
4 directed verdict motion. And unless the Court wants one,
02:35PM 5 frankly, these issues have been -- argued ad nauseam.

6 THE COURT: I am not inviting, nor do I think it
7 will necessarily help the Court. I'm asking whether there is
8 anything you wish to orally supplement on your submission
9 because the Court did not hear argument on this, or are you
02:36PM 10 satisfied to have the Court make the decision on the written
11 record?

12 MR. BLUM: Your Honor, the -- in terms of the
13 nuisance and the trespass claims, both of those require proof
14 of an ownership. We've talked about what -- what their -- what
02:36PM 15 the evidence is in relation to the jury instructions. I really
16 don't have anything to add to that.

17 So as long as those arguments are deemed part of my
18 motion, I really don't see any reason to add.

19 THE COURT: All right. And, Mr. Richard, do you
02:36PM 20 wish to be heard on the motions?

21 MR. RICHARD: I think based on the discussion we had
22 this morning, I would appreciate the opportunity to submit a
23 three- or four-page brief on the issue we discussed.

24 THE COURT: You're referring to the issue concerning
02:37PM 25 the *Sabic*, S-a-b-i-c, issue and the footnote in that case and

1 the like?

2 MR. RICHARD: Yes, Your Honor.

3 THE COURT: Did you previously brief the issue, that
4 is, did your client previously or did you brief it on behalf of
02:37PM 5 your client?

6 MR. RICHARD: You know, as I stand here, I don't
7 know. I imagine we briefed remediation damages, future
8 damages, trespass. But that particular issue, I just wanted
9 the opportunity to look at it. I've been really focused on
02:37PM 10 closing arguments and evidentiary matters and now returning to
11 the more -- you know, legal issues.

12 THE COURT: All right. Let's do this. Let's wait
13 to see what the jury does. I don't intend to make a decision
14 before I hear from the jury. So I'm going to defer the Court's
02:37PM 15 decision.

16 And then let's see whether it makes sense for the
17 Court to receive additional briefing on that.

18 MR. RICHARD: Thank you, Your Honor.

19 THE COURT: Mr. Blum.

02:38PM 20 MR. BLUM: I just -- that's fine, Your Honor. This
21 is on the issues where you're the fact finder. How are we
22 going to -- there's no more evidence. Are you going to want
23 briefing? Or what do you want from us, if anything?

24 THE COURT: I will let you know. I think -- my
02:38PM 25 question is: What, if anything, are you requesting of the

1 Court?

2 MR. BLUM: Your Honor, honestly right now I'm
3 exhausted. I had three hours' sleep last night. My guess is
4 Patrick didn't get much more.

02:38PM

5 THE COURT: So why don't we just wait a little bit.
6 Let's see what the jury does, and we can have a further
7 discussion.

8 I suspect that I am going to direct the parties to
9 do more.

02:38PM

10 MR. BLUM: That's fine, Your Honor.

11 THE COURT: I, for example, have received the
12 findings and conclusions. I have looked at them. But I'm
13 probably going to want more than I have received at least by
14 way of support for the proffered findings and conclusions.

02:39PM

15 So for the plaintiff, for example, I received the
16 findings and conclusions that are -- what I would view and --
17 and some judges prefer this, some don't -- I happen not to --
18 is they're fairly conclusory without much evidentiary support.

02:39PM

19 And I -- I would find it helpful to actually have
20 something that is more fulsome and has some of the evidence
21 that you're relying upon for the various findings and
22 conclusions.

02:39PM

23 MR. RICHARD: Your Honor, I'm remembering that when
24 we had Mr. Zelikson testify via Zoom, Your Honor testified --
25 or Your Honor stated that you would be requesting post-trial

1 briefs on the NCP or the equitable issues. I forget how you
2 phrased it. But I left that day looking forward to further
3 briefing.

02:40PM 4 THE COURT: Well, I will be back in touch with the
5 parties. But let's go ahead and just take a break and see. I
6 have to get these materials to the jury. And we'll return to
7 this issue.

02:40PM 8 MR. BLUM: One issue you did say you wanted briefing
9 on earlier is on the orphan share question that we raised very
10 early.

11 THE COURT: Yes. All right.

12 All right. I'm being told that there may be an
13 issue with respect to a couple of the exhibits?

14 MR. TROWBRIDGE: Yeah.

02:40PM 15 THE COURT: All right. Mr. Trowbridge, perhaps you
16 could address the issue.

02:40PM 17 MR. TROWBRIDGE: We had previously provided the
18 digital copies of the redacted versions of Exhibit 1 and 486,
19 but I think we overlooked providing the hard copies to the
20 Court. And they're being printed and delivered right now.

21 THE COURT: All right. And this is Exhibit 1 and --
22 is it 483 or 486?

23 MR. RICHARD: Just, I can cut to the chase. These
24 have already been provided in redacted form by our paralegal.

02:41PM 25 THE COURT: All right.

1 MR. RICHARD: If they want to double-check those,
2 that's fine.

3 THE COURT: It may be just that you're
4 miscommunicating, that's all.

02:41PM 5 All right. So, Mr. Trowbridge, assuming that the
6 plaintiff has provided them, then the issue is resolved;
7 correct?

8 MR. TROWBRIDGE: Yes.

9 THE COURT: All right. So please make sure you stay
02:41PM 10 in close communication with Mr. Cruz in case, you know, the
11 jury has questions or the Court does with respect to the
12 special verdict form. Otherwise, we're in recess.

13 Thank you.

14 (Proceedings adjourned at 2:41 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

DATED THIS 3RD DAY OF DECEMBER, 2021.

/S/ MYRA L. PONCE

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